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REPORT ON THE IMPACT OF THE 1983 SEXUAL ASSAULT LEGISLATION IN HAMILTON-WENTWORTH

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The views expressed herein are solely those of the author and do not necessarily represent the views of the Department.

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1.0 INTRODUCTION: BACKGROUND TO THE RESEARCH

On January 4, 1983, Bill C-127, "An Act to Amend the Criminal Code in Relation to Sexual Offences and Other Offences Against the Person," was proclaimed by Parliament. The sexual assault provisions of Bill C-127 made fundamental amendments to the Criminal Code with respect to the substantive, procedural and evidentiary aspects of Canada's rape and indecent assault laws.

Bill C-127 was passed after more than a decade of criticism and pressure by women's and other interest groups to redress problems perceived in the Criminal Code treatment of the crime of rape, and the response of the criminal justice system to victims of rape. In the remainder of this chapter, we present the results of an overview of the relevant literature. We begin with a brief summary of the problems identified with the old legislation, common law rules and processing of reports. We then consider the substantive, evidentiary and procedural changes introduced by Bill C-127, and suggest the objectives underlying the amendments.

Throughout this chapter we briefly describe the problems identified with the pre-1983 legislation, and the overall objectives and substantive, evidentiary and procedural changes introduced by Bill C-127. Recent research and theoretical literature is used to indicate the factors considered to constrain reporting and convictions and to contribute to the "secondary victimization" of sexual assault victims under the pre-1983 legislation. The results of our critical review of the literature were used to develop the conceptual models that guided the data collection and analyses.

1.1 Criticisms of the Rape Law

Dissatisfaction with the old rape (sections 143 and 145) and indecent assault (sections 149 and 156) laws revolved around three issues:

(i) the perception that rape had one of the lowest reporting and conviction rates of crimes against persons;

(ii) the humiliation felt by victims as a consequence of their involvement in the criminal justice system; and

(iii) the attitudes towards women expressed in and reinforced by the legislation.

According to the Canadian Urban Victimization Survey,[1] 62 per cent of sexual assault incidents that occurred in 1981 had not been reported to the police.[2] An important reason for not reporting the assault to the police, cited by 44 per cent of the survey respondents who failed to report such assaults, was the fear that the police or courts held a negative attitude towards sexual assault complainants. According to the 1983 national population survey conducted for the Badgley Committee on Sexual Offences Against Children and Youths, only 24 per cent of sexually assaulted females reported the assault to the police.[3] Male victims were even more reluctant to contact the authorities: 11 per cent of assaulted males indicated that they had done so.[4] While the figures may differ, it is clear that the majority of sexual assaults were not coming to the attention of the criminal justice system, and fear of the way in which victims were treated by the police and courts was an important factor discouraging reporting.

Some of the observers also considered that too few of the reported cases ended up in court. Clark and Lewis, based on their analysis of 116 reports of rape made to the Metropolitan Toronto police, argued that the "progress of a rape case through the criminal justice system reflects a highly selective process of elimination".[5] Only a fraction of reported rapes are considered as "founded" or based on fact, only a fraction of these cases culminate in an arrest and trial, and even fewer result in a conviction.

The 1983 Canadian *Crime Statistics*, for example, show that 31 per cent of all rape reports were considered as unfounded or baseless. This was considerably higher than the four per cent of all assault complaints that were classified as unfounded.[6] Marilyn Stanley, in her review of Canadian studies concerned with the police processing of rape complaints, argued that police classified cases as unfounded if they did not believe a

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[1] The Canadian Urban Victimization Survey was conducted in 1982 with 61,000 respondents in seven major Canadian urban centres. Solicitor General, Bulletin Four of the Canadian Urban Victimization Survey, *Female Victims of Crime* (1985), pp. 2 and 4.

[2] The survey estimated that approximately 17,300 sexual assault incidents occurred between January and December 1981, of which about 90 per cent involved female victims.

[3] Committee on Sexual Offences Against Children and Youth, *Sexual Offences Against Children* (Ottawa: Ministry of Supply and Services, 1984), p. 187.

[4] According to the findings from the Badgley Committee's research, as many as one of every two women and one of every three men in Canada have been subjected to unwanted sexual incidents during their lifetime.

[5] Lorenne Clark and Debra Lewis, *Rape: The Price of Coercive Sexuality* (Toronto: The Women's Press, 1977), p. 57.

[6] Statistics Canada, *Canadian Crime Statistics*, Catalogue 85-205 (Ottawa: Supply and Services, 1983).

rape had occurred as well as in those cases that they did not feel would be successfully prosecuted at court.[7] Toronto and Vancouver studies by Clark and Lewis concluded that the major factor in the decision to terminate the investigation or proceed with the case was the character and conduct of the complainant. Complainants who were intoxicated at the time, were unemployed or teenage runaways, were between 30 and 40 years of age and divorced, separated or living in a common law relationship, or were under psychiatric care, were less likely to have their complaints considered as founded. The police were also less inclined to pursue reports by complainants who were not hysterical at the time of report, waited too long to report the assault, or had voluntarily accompanied the assailant in his car or to his residence.[8]

The 1977 study by Clark and Lewis also demonstrated that conviction rates for rape were substantially lower than general conviction rates for other criminal offences. They cited 1971 (police) Crime Statistics that showed an 86 per cent overall conviction rate for criminal offences, whereas their review of the research for Metropolitan Toronto and Ontario uncovered conviction rates for rape of between 18 and 51 per cent.[9]

The difficulty in securing a conviction in a rape case was considered by legal experts to stem from a number of procedural and evidentiary rules, one being the doctrine of recent complaint. This had developed as an exception to the general common law rule against the admission of previous out-of-court statements made by the witness. The exception developed because it was assumed that a truly virtuous woman who had been raped would raise a hue and cry at the first reasonable opportunity.[10] Evidence of the complaint could be admitted if the complaint was made at the first reasonable opportunity ("reasonable" was decided on a case-by-case basis) and was spontaneous (not induced). Evidence of this nature had no probative nature upon any fact in issue (i.e., would not corroborate the complaint of rape) but was considered as relevant to the collateral issue of the witness' credibility. Thus, if the victim had been silent or if the complaint evidence was inadmissible (i.e., the complaint was not made soon enough, had been induced, or if a question arose as to the exact wording), the

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[7] Marilyn G. Stanley, *The Experience of the Rape Victim with the Criminal Justice System Prior to Bill C-127*, Sexual Assault Legislation in Canada: An Evaluation, Report No. 1, (Ottawa: Supply and Services Canada, 1987).

[8] Stanley, "*The Experience of the Rape Victim*," pp. 38-39.

[9] Clark and Lewis, *Rape: The Price of Coercive Sexuality*, p. 56. The 51 per cent in the District of York was actually 32 per cent convicted for rape plus 19 per cent acquitted of rape but convicted of a lesser offence.

[10] Gisella Ruebsaat, *The New Sexual Assault Offences: Emerging Legal Issues*, (July 1985), Sexual Assault Legislation in Canada: An Evaluation, Report No. 2 (Ottawa: Supply and Services Canada, 1987), p. 50.

judge was required to instruct the jury that it could draw an adverse inference as to the victim's credibility.[11]

Despite the fact that there are many quite legitimate reasons why a victim might be reluctant to disclose the assault (e.g., embarrassment or fear of the publicity attendant upon disclosure)[12] and the fact that in most criminal cases the silence of the victim is irrelevant,[13] the lack of recent complaint could be used to undermine the victim's credibility at trial.

Another factor impeding convictions was the need for corroboration of the victim's version of events, again an exception to common law rule.[14] Under section 142, if the only evidence implicating the accused was the testimony of the victim, the judge was required to caution the jury that it was not safe to find the accused guilty of rape in the absence of corroboration but that they might do so if they believed her evidence was true beyond a reasonable doubt.[15] While section 142 was repealed in 1976, the practice of warning juries continued to assist them in determining the weight that they might give to the uncorroborated evidence of rape complainants. The presumption that women are untrustworthy and prone to fabricate charges of rape persisted in this rule of practice.

Convictions were also made more difficult by the treatment of evidence of the *prior sexual history* of the complainant. Prior to 1976, common law rules governed the admissibility of sexual history evidence considered as relevant to the issue of consent (an issue of fact) or to credibility of the victim (a collateral issue).[16] If the issue was consent (or the accused's belief in the consent of the complainant), the defence could question the complainant about her prior history with the accused and her general reputation for chastity. The assumption was that sexually active women were more likely to have consented to intercourse than chaste women and that, if a prior sexual relationship had existed with the accused, the complainant was more likely to have consented to the

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[11] Stanley, "*The Experience of the Rape Victim*," p. 42.

[12] P.K. McWilliams, *Canadian Criminal Evidence*, 2nd edition (Aurora: Canada Law Book, 1984), p. 367.

[13] Stanley, "*The Experience of the Rape Victim*," p. 47.

[14] David Watt, *The New Offences Against the Person* (Toronto: Butterworths, 1984), p. 165.

[15] Stanley, "*The Experience of the Rape Victim*," p. 49. Note as well that the corroboration rule held for indecent assault on a female but not indecent assault on a male.

[16] Stanley, "*The Experience of the Rape Victim*," p. 75.

incident in question.[17] The complainant was compelled to answer the questions and contradictory evidence could be introduced by the defence.

If the credibility of the complainant was the issue in question, the defence could cross-examine the complainant about her prior sexual conduct with persons other than the accused. The apparent logic was that if the moral character of the complainant is suspect, then her credibility is also diminished.[18] As credibility was a collateral issue, the complainant was not compelled to answer the questions (also the judge could intervene and exempt the witness from the questions); however, refusal to answer the questions could affect a jury's perceptions of the victim's veracity.

These common law rules of evidence allowed prolonged explorations of the complainant's prior history and lifestyle, and as a result, victims were humiliated and effectively put on trial in lieu of the accused.[19] The exploration of the moral conduct and character of the victim also tended to prejudice juries against complainants, thereby making convictions more difficult. Boyle has also argued that the effect of this belief that an unchaste woman was more likely to be untruthful was notorious for causing severe embarrassment to the victim by permitting questioning of the complainant about her past sexual history. Boyle argues that one could legitimately question whether this discouraged reporting.[20]

In 1976, the new section 142 restricted questions about the prior sexual history of the complainant with persons other than the accused, except if notice had been given of the particulars sought and the judge, after an *in camera* hearing, had decided that excluding the evidence would prevent the making of a just determination of an issue of fact in the proceedings, including the credibility of the complainant.

This amendment elevated credibility, which had been a collateral issue, to the status of a material issue. Thus the complainant could no longer refuse to answer questions as to her prior sexual history with persons other than the accused, and the defence could introduce contradictory proof if she refused or denied in answer to the

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[17] Watt, *The New Offences*, p. 188.

[18] Stanley, "*The Experience of the Rape Victim*," pp. 77 - 82, and Christine L.M. Boyle, *Sexual Assault* (Toronto: The Carswell Company, 1984), p.15.

[19] P. McNamara, "Cross Examination of the Complainant in a Trial for Rape," *Criminal Law Journal*, No. 5, 1981, p. 25.

[20] Boyle, *Sexual Assault*, p. 15.

questions.[21] As Boyle has commented, "it seemed that an amendment touted as an improvement in the position of the complainant had the opposite effect."[22]

For the victim, the trauma resulting from involvement in the criminal justice process stemmed from these evidentiary and procedural rules, as well as from practices and attitudes of practitioners that neglected their needs or concerns. The consequences of the original offence could be compounded via a "secondary victimization" during the hospital examination, the police investigation and the trial process itself.

Legislative amendments were intended to address these issues. As well, other reforms were seen as necessary to fulfil the obligations of the criminal justice system to the victim and to encourage reporting. The 1983 highlights report of the Canadian Federal-Provincial Task Force on Justice for Victims of Crime, for example, called for specialized training of police officers and hospital staff to sensitize them to the needs of sexual assault victims, a review of training and procedures to ensure that reliable forensic and other evidence is collected to facilitate successful investigation and prosecutions, and the provision of assistance and services that meet the victim's practical and emotional needs for information and crisis counselling.

Another source of agitation for law reform came from feminist historical analyses of the rape laws. They argued that the tendency of the criminal justice system to degrade the victim stemmed from the male prejudices and fears that shaped the legislation. Women were seen as chattel owned by men; for example, husbands were not legally able to rape their wives. Law-givers had sympathized with offenders rather than with the victims and took exceptional steps to protect men from wrongful accusations from emotional, unreliable and vengeful women.[23] The discriminating and patronizing attitudes embedded in the legislation were considered to influence the behaviour and attitudes of practitioners, thereby contributing to low founding and conviction rates and the suspicion with which victims were often greeted by the responding agencies.

Pressure for reform therefore also focused on the way that the legislation defined the crime of rape and the groups who were excluded from protection under the law. The act of rape, under statute law, had to involve penetration of the vagina by the penis; could only be committed by a man against a woman; must have taken place without the consent of the woman, or with her consent if this was extorted by threats, fear of bodily harm or false representations; and could only be committed outside the bounds of marriage.

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[21] Watt, *The New Offences*, p. 190.

[22] Boyle, *Sexual Assault*, p. 135.

[23] Boyle, *Sexual Assault*, pp. 4-6 and Clark and Lewis, *Rape: The Price of Coercive Sexuality*, p. 11.

Thus, criticism was aimed at the exclusion of nonconsensual homosexual activities, the unequal protection of and responsibilities under the law of men and women, the lack of protection for wives from coercive sexual acts with their husbands, and the lack of protection from nonconsensual sexual activities other than intercourse (e.g., forcible anal or oral sex, penetration by a finger or object, etc.).

Argument was also made that rape was characterized as a crime of uncontrollable sexual passion rather than as an act of violence or abuse of power.[24] A re-conceptualization of sexual offences was advocated, one that would define and process these offences as assaults. As a consequence of this, it was anticipated that sexual history and conduct of the complainant would no longer be an issue at trial. The emphasis would shift from the behaviour of the complainant to the assaultive aspects, thereby reducing the potential for the secondary victimization of the complainant.

Observers also argued that the sentences imposed for rape were inappropriate and that the sentence structure needed to be altered. The maximum sentence for rape was life imprisonment. According to Clark and Lewis, 1971 national data show sentences for rape convictions ranged from a suspended sentence to 14 years imprisonment. They concluded that the average sentence was four to five years, and argued that this does not support the claim that rape is treated as a serious crime in Canada.[25]

Other observers criticized the lack of direction in the statute law as to how aggravating factors could be reflected in sentence length. The reluctance of jurors to convict rapists when the potential sentence did not reflect the severity of the alleged assault had also been noted.[26]

Thus the pressures for legislative reform focused on how sexual assaults were defined, what groups were protected by law, the sentence structure, and the evidentiary and procedural rules governing sexual assault trials.

1.2 Sexual Assault Provisions of Bill C-127

There are no formal statements of the government's intentions underlying the 1983 legislative amendments. The Law Reform Commission had made proposals for the legislative amendments, remarking that the goals of reform were: (i) to increase the

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[24] Carol Smart and Barry Smart, *Women, Sexuality and the Law* (London: Routledge and Kegan Paul, 1978), and Steven Box, *Power, Crime and Mystification* (London: Tavistock, 1983).

[25] Clark and Lewis, *Rape: The Price of Coercive Sexuality*, pp. 56-57.

[26] Justice and Legal Affairs No. 78, April 22, 1982 (House of Commons), p. 7.

protection for the dignity and inviolability of the person; and (ii) to alleviate the distress, humiliation and stigmatization associated with the old law.[27]

Bill C-127, which became law on January 4, 1983, dropped the crime of rape, attempted rape, sexual intercourse with the feeble-minded, and indecent assault (male and female), and replaced them with sexual assault. Proof of sexual intercourse was no longer required, thereby expanding coverage to include a broader range of assaults, including coercive anal or oral penetration. One could also argue that dropping the requirement for the crown attorney to prove penetration would make the trial easier on the complainant as the defence could no longer "pursue a line of questioning directed at raising a doubt as to whether penetration actually took place".[28]

These changes were intended to emphasise the assaultive rather than the sexual nature of the crime. The legislation, however, did not provide a definition of "sexual". Some observers suggest this has the potential to reverse the intent of the change, if it focuses attention on whether the assault was sexual and results in a more narrow interpretation by the courts as to what constitutes a sexual assault.[29]

New sections 246.1 to 246.3 describe three levels of sexual assault: (i) Level I or simple sexual assault; (ii) Level II or sexual assault with a weapon, threats to a third party, bodily harm or party to the offence; and (iii) Level III or aggravated sexual assault. Maximum penalties range from six months to life imprisonment. This tripartition was intended to recognize the variety in the aggravating factors associated with an assault. The flexibility in charging was expected to encourage convictions (at least to the extent that the maximum sentence of life for rape had been considered to discourage convictions when the potential sentence did not reflect the severity of the alleged offence).

A second substantive change was to make the legislation neutral as to gender. Both sexes are protected from coercive sexual assault committed by a man or a woman. Boyle has argued that the "degenderization" is purely nominal in nature. She sees this as a legal reform that gives the appearance of equality rather than as a social reform that addresses the social problems and practices that result in "the unequal burden of victimization that women bear in this context".[30] Coverage was also extended, under section 246.8, to spouses, whether living apart or not.

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[27] Law Reform Commission, *Sexual Offences* Working Paper No. 22 (Ottawa: 1978), p. 18.

[28] Boyle, *Sexual Assault*, p. 46.

[29] See, for example, Ruebsaat, *"The New Sexual Assault Offences, Emerging Legal Issues,"* p. 13.

[30] Boyle, *Sexual Assault*, p. 41.

Procedural and evidentiary rules that govern the conduct of trial were also altered or abrogated. These changes were generally aimed at preventing the secondary victimization of the complainant by the criminal justice system and increasing founding and conviction rates. Ultimately they were expected to encourage reporting of sexual assaults.

The first evidentiary change (section 246.4) was the removal of the requirement for corroboration of a victim's testimony to obtain a conviction, and the explicit statement in the Bill that a judge cannot warn a jury that it is unsafe to convict the assailant without corroboration. The corroboration rule had implied that a rape victim's testimony was less credible than that of any other crime victim acting as a witness. This assumption encouraged actors in the judicial process to question the victim's credibility (which can still be challenged on other issues). The idea that the victim was possibly lying was also thought to encourage the use of polygraph tests on the victim or the subjection of the victim to a series of interviews to ensure the consistency of the facts of her story. These practices and attitudes were regarded as contributing to the reluctance of many women to report. Corroboration was, in most cases, not possible as there are rarely witnesses to sexual crimes. Submission extracted by the use of threats would not provide corroborating signs such as bruises arising from a struggle. The need for corroboration therefore reduced conviction rates. It was anticipated that the removal of the corroboration requirement would lead to higher levels of reporting and more convictions.

The second evidentiary change (section 246.5) was the abrogation of the rules regarding recent complaint. The assumption had been that a charge was likely to be fabricated if a victim did not report the incident at the first "reasonable" opportunity, as a truly virtuous woman would complain as soon as possible. The change in the law was meant to reflect the reality that shame, fear of retaliation, or fear of the impact of disclosure on the victim's reputation or personal relationships, do not encourage prompt complaint. Dropping the recent complaint rules was therefore expected to increase the founding and conviction rates.

A third reform (section 246.6) was the limitation on the admissibility of evidence regarding the previous sexual history of the complainant with persons other than the accused, with the exception of three specific circumstances. Notice must be given of the intention to introduce such evidence, and the determination of its admissibility is done at an *in camera* hearing at which the complainant is not a compellable witness. The three exceptions allowable are:

- to rebut evidence of the complainant's sexual activity previously brought forward as evidence by the prosecution;

- to provide specific instances that tend to establish the identity of the person who had sexual contact with the complainant on the occasion set out in the charge;

- to provide evidence of sexual activity that took place on the same occasion as that which forms the subject of the charge where this evidence is related to the consent of the complainant as alleged by the accused.

Bill C-127 (section 246.7) also prohibited the introduction of evidence of sexual reputation for the purpose of challenging or supporting the credibility of the complainant.

These latter changes were expected to reduce the potential for harassment of the victim during the trial proceedings. They were a logical move accompanying the redefinition of rape as sexual assault. If the offence is to be treated primarily as an act of violence, then evidence regarding the sexual activity of the complainant would be irrelevant. The change could also be seen as helping ensure that the scope of protection was not narrowly extended to "certain women who had not infringed judicial and societal norms about what was appropriate behaviour and life style".[31]

Based on this review of the nature of the substantive, procedural and evidentiary changes made to the law in 1983, the overall objectives of the amendments could be defined as follows:

- to reduce or prevent the "secondary victimization" of the victim resulting from her (or his) involvement in the criminal justice system, in particular during the trial;
- to extend legal protection to a wider range of Canadians and to enhance their protection from a wider range of nonconsensual sexual offences;
- to encourage the reporting, and affect founding and conviction rates, for sexual offences.

The extent to which we can demonstrate that these objectives have been achieved (and have had other unintended consequences), as a result of the legal reforms, is discussed in the following chapters.

1.3 Organization of the Report

In the following chapter, we briefly outline the underlying research issues for this study and briefly describe the methodology employed to complete the study. In Chapters Three to Six we present our findings with respect to the four central study issues, via a synthesis of the major lines of evidence available.

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[31] Boyle, *Sexual Assaults*, p. 14.

The final chapter summarizes the key findings, draws conclusions with respect to the intended and unintended impacts of Bill C-127, and suggests future directions for legislative reform, nonlegislative measures and further research.

2.0 RESEARCH ISSUES AND STUDY METHODOLOGY

As noted in the previous chapter, Bill C-127 became law on January 4, 1983. The new law deleted rape and indecent assault from the Criminal Code and replaced them with three degrees of sexual assault in an effort to focus on the assaultive rather than the sexual nature of the crime. The three levels were sexual assault; sexual assault with a weapon, threats to a third party, or causing bodily harm; and aggravated sexual assault. Protection was extended to new groups (e.g., spouses, males), and evidentiary and procedural rules governing the conduct of a sexual assault trial were altered.

These changes were major and were expected to improve reporting and conviction rates, alter attitudes towards the nature of the crime, better sensitize those who administer the law to the needs of the complainant, and make the experience of participating in the criminal justice system a less harrowing and degrading experience for the victim.

In the past, some legislative reforms have produced little or opposite effects to those intended. (It has been argued, for example, that section 142, enacted on April 26, 1976 to encourage more widespread reporting of rape, actually worked counter to this objective.)[1] As well, little is known in Canada about the effects of legislative changes generally in tackling the identified problems. Furthermore, the link between legal reform and justice system changes is not known, especially given the relative "youth" of legislative evaluation research as a field of study.

To remedy these gaps in knowledge in the areas touched by Bill C-127, the Department of Justice Canada has commissioned a study to: review the implementation of the law; assess the intended (and unintended) impacts and effects of Bill C-127 on the processing and outcomes of sexual assault reports and on the experience of the victim; and determine whether the law has met its objectives. In an effort to strengthen the overall design of the study, the Department decided to have this work undertaken simultaneously in six sites across Canada. Ekos Research Associates were hired to conduct this study in Hamilton-Wentworth, Ontario.

2.1 Research Issues

There are four major study issues. The first describes the current response of the criminal justice system and related agencies to reports of sexual assault incidents.

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[1] See Boyle, *Sexual Assaults*, p. 135 and Stanley, "*The Experience of the Rape Victim*," p. 85.

Before we can evaluate whether the 1983 amendments have been successful in achieving their intended impacts and effects, or whether further changes are needed, we need to understand how the Hamilton-Wentworth criminal justice system (police and courts) and related agencies, such as the rape crisis centre and medical facilities, operate today in relation to sexual assault. We interpret this issue very broadly as including: (i) the characteristics of the incidents reported to these agencies; (ii) the process or sequence of steps by which a report of sexual assault is filtered through the criminal justice system and related service agencies; (iii) the outcomes of each stage of the process; and (iv) the types of factors that influence case progression and outcomes.

The second issue, and perhaps most important, as well as methodologically complex, determines the direction and extent of any changes in practices and outcomes since the introduction of Bill C-127; it also identifies factors that explain these changes or lack of changes.

There are three parts to this issue: (i) to document the nature and severity of any changes in processes and outcomes since 1983; (ii) to discern to what extent the implementation of Bill C-127 is responsible for these changes; and (iii) to isolate the factors that may enhance, retard or prevent the realization of the intended impacts of the legislative amendments.

While our primary focus is on the practices and outcomes expected to change as a result of Bill C-127 (see the following chapter for an explanation), we have attempted to remain sensitive to unexpected or unintended changes. The methodological complexity arises from the difficulty associated with determining the relative effects of Bill C-127 and other possible explanatory or causal factors. In the following section we describe the approach taken to identify the relative causal role played by the amendments.

The third major issue describes the victim's felt experience with the criminal justice system and related medical and rape crisis services. We will be looking at the victim's impressions of how well or poorly she (or he) was treated by the various agencies during the pretrial and trial periods. This is a very important issue since many of the amendments were specifically aimed at making the victim's experience in court less harrowing and humiliating. Unfortunately, there are no preamendment data on how victims experienced the Hamilton-Wentworth criminal justice system. This lacuna will prevent us from determining if the treatment of the victim has altered as a result of the amendments or any other factors. However, we can use expert opinion and existing research studies to suggest the impacts of the amendments in this important area.

The final research issue documents what improvements are suggested by practitioners to better achieve the intentions underlying the 1983 legal reforms. Practitioners were defined as police officers, crown counsel, defence lawyers, sexual assault centre counsellors and emergency medical services staff at the McMaster University Medical Centre, which is designated as the regional centre for sexual assault

cases. In personal and telephone interviews, practitioners were asked if the problems that the reforms were designed to address still persist, if there are other outstanding problems, and the nature of any possible solutions.

2.2 Study Methodology

The research issues are complex, and we were reluctant to rely on any single indicator or source of evidence as the basis for our findings and conclusions. We therefore used five different lines of evidence:

1. a review of police and crown files for sexual assaults reported in periods before and after the amendments;

2. a review of sexual assault centre files for pre and post amendment periods;

3. interviews with practitioners in the criminal justice system and related agencies;

4. observation of sexual assault trials during much of 1987; and

5. interviews with sexual assault victims.

The objective and subjective data collected from these different sources were "triangulated" in order to address each of the research issues. In other words, the various lines of evidence were used as sources of cross-corroboration or validation for major findings. This enhances the credibility of study findings.

The major problem faced in this study was the need to estimate the causal system that explains observed changes in the dependent variables of interest (primarily the various outcomes from reporting and court involvement). Of particular concern is the need to disentangle the effects of Bill C-127 from other explanatory factors, such as changes in public attitudes towards sexual autonomy and the stigma of being labelled as a victim of a sexual assault, or independent changes in the way in which organizations are equipped to deal with reports of sexual assault or their victims.

Our ability to empirically extricate the relative influence of these different causal factors is very limited. This is primarily because of the research design. For obvious reasons, it was not possible to have an experimental research design that would randomly assign sexual assault victims to pre and post amendment legal definitions and evidentiary and procedural rules. Without an experimental design, it is difficult to control for, or rule out, possible explanations other than the amendments.

It is also partly due to the lack of measurement of certain potentially significant factors. These include the media treatment of sexual assault, public education efforts,

and public mores and attitudes and how these have changed over time. Without these types of data, it is difficult to statistically control for other explanatory factors.

In the absence of experimental controls, one can attempt to exert statistical controls. We have attempted to identify plausible competing explanations and to determine their likely causal impacts using statistical analyses of quantitative data (for example, to control for differences in the types of incidents being reported) as well as the qualitative findings from the key informant interviews. These latter provided expert opinion, from different perspectives, as to the factors that may have accounted for observed outcomes, or masked or heightened the expected impacts of the 1983 reforms. The observation of sexual assault trials was also useful in suggesting how the legislative amendments had been implemented. The synthesis of these lines of evidence, however, is a reasoned judgement rather than a definitive attribution of causality.

We also caution the reader that throughout this report some of the tables contain large numbers of missing cases. Where this occurs, the reader should be wary of interpreting trends or relationships because the missing cases may very well differ in a systematic fashion from the cases presented.

It is also important to note that the findings from each of the individual lines of evidence were reviewed by a research advisory committee composed of representatives from the Hamilton-Wentworth criminal justice system and related agencies. This review process helped to ensure that major errors in fact or interpretation have been avoided. Responsibility for the synthesis and conclusions is, however, ours alone.

2.2.1 Review of Police and Crown Files

A major source of information for this study was the records kept by the Hamilton-Wentworth Regional Police for reports of sexual assault (section 246), rape or attempted rape (sections 143 and 145, respectively), indecent assault on a female (section 149) and indecent assault on a male (section 156). The information obtained included a description of the incident, complainant and suspect; the results of the police investigation of the incident; the decision as to whether or not the report was considered as founded or true; charges laid by the police; reasons for not pursuing the report (if no charges were laid); charges pursued by the crown attorney and the outcome of the trial.

Our study population was defined as reports from a preamendment time period (1982) and a post amendment time period (1984/85). We had hoped for a two year Time One period but this was not possible as the 1981 police occurrence report identification numbers are not computerized. Hence we could not distinguish rape and indecent assault reports from all other offences reported in 1981 without reviewing some 60,000 files.

As study resources precluded a review of all the approximately 1,000 sexual assault reports made during our study periods, we selected a sample of 202 files for Time One and 245 files for Time Two. As there are relatively few reports of rape, attempted rape and the higher levels of sexual assault, we reviewed all of these files and selected a random (systematic) sample from the universe of indecent assault and Level I sexual assault reports.

Two different versions of the data files were used in the analysis and presentation of the data. A weighted file was produced for purposes of presenting descriptive statistics -- in particular, making univariate generalisations about the study population.[2] Weighting was necessary since certain classes of observations (e.g., Level I sexual assaults) were less likely to appear in our sample than they were in the population.[3] Since Level I offences are systematically different than Level II and Level III offences, an unweighted file would produce bias in estimating to the broader population.

For the purposes of inferential tests of statistical significance (e.g., chi square), an unweighted file was necessary. This is because weighting strategies artificially alter the number of cases and thus the variances of the variables affected. Given that tests of statistical significance are based on variance, the tests would be invalid if conducted on the weighted data file. Thus, all tests of statistical significance, especially those relating to changes over time, were conducted on the unweighted data file.

The number of reports made in the two time periods and the numbers of files reviewed (i.e., the sample) are displayed in Table 1 below.

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[2] The weighted file reflects the distribution of cases in the population. The sample cases were weighted in order to approximate as closely as possible their equivalent representation in the population. Thus the 193 Level I assaults were weighted to approximate the actual 688 reports of Level I sexual assaults for which the police completed occurrence reports in 1984/85. However, due to rounding errors in the computer-based weighting program, the weighted file only contains 664 Level I cases. The weighted file also over represents the Level II sexual assaults for which the police completed occurrence reports during 1984/85.

[3] In particular, the sampling strategy used for this project had disproportionately increased the incidence of Level II and Level III cases in the sample. This occurred because we conducted census reviews of the police files included under these two classifications. It was felt that using simple random sampling techniques would jeopardize our ability to account for the differences represented by Level II and Level III cases due to their low incidence in the population. Thus, we stratified the sample by police classification of the offence, conducting census reviews of the more serious Level II and Level III sexual assaults, and a systematic sample (with a random start point) of the Level I cases. As previously noted, the overall sample was then weighted in order to restore the original balance between the various *Criminal Code* classifications.

Table 1 Sampling Distribution for Police File Review

	Total Number of Reports	Number of Files Reviewed
Time One (1982)		
Rape	48	48
Indecent assault (female)	197	138
Indecent assault (male)	23	16
TOTAL	268	202
Time Two (1984/85)		
Level III sexual assault	10	10
Level II sexual assault	46	42
Level I sexual assault	688	193
TOTAL	744	245

As the information was captured from the occurrence reports, criminal records, crown sheets and other standard reporting forms used by the police, we had little control over data quality. Not only did some files lack certain pieces of information; we cannot guarantee that all fields were completed in a consistent manner from report to report or year to year.

Careful training of the field staff, the assistance of the Hamilton-Wentworth Regional Police records staff in interpreting reports, and a careful analysis of the internal consistency of the data collected would suggest, however, that transcription errors are minimal. With the large sampling fractions used, we also believe that our ability to infer from sample statistics to the true parameters of the study populations is excellent. We cannot, however, safely extrapolate from these sample statistics to the wider universe of all pre and post amendment reports, as pre-1982 or post-1985 reports may differ systematically from our study populations. Neither can we extrapolate to unreported sexual assaults.

In addition to the above noted sources of information, we also reviewed all district court crown briefs for rape, indecent assault and sexual assault cases tried in 1981/82 and 1984/85. These briefs provided additional insight into the factors that influenced court outcomes (primarily the evidence available to the crown and any plea bargaining). While many cases of this nature were handled by the Provincial Courts in Hamilton-Wentworth, the crown briefs are not kept by the Provincial Court. These are sent to the police, who usually retain only the crown sheet (which records the verdict

and sentence). The total number of crown files reviewed was 39 for Time One and 25 for Time Two.

2.2.2 Review of Sexual Assault Centre Files

We also reviewed a random sample of files maintained by the Sexual Assault Centre in Hamilton to record calls made by sexual assault victims. One hundred reports were randomly selected from files available for each of 1981/82 and 1984/85. The study population was defined in advance to exclude cases that had occurred more than a year earlier and assaults that had occurred in another jurisdiction.[4]

The final sample consisted of 100 Time One reports and 99 Time Two reports. This sample included the majority of cases reported to the Centre that met our study population definition (111 in 1981/82 and 125 in 1984/85). Thus we are able to project any statistical relationship found for our sample to the wider study population with a high degree of confidence.

As was the case with the records obtained from the police, the Sexual Assault centre files from which the data were collected were also not always complete. For instance, the degree of completion of the forms was not consistent as some counsellors provided copious notes on the emotional state of the victim while others did not. Consequently, as is often the case with archival research where the researcher is dependent upon information gathered by agency staff for internal reasons, we cannot guarantee the reliability and validity of the data collected.[5]

During the summer and fall months of 1987, the Centre agreed to add two questions to their usual call record forms. These asked if the caller had or intended to report the assault to the police, and if not, the major reasons for not reporting. The first question was asked of 123 callers, the second of 34 callers.

2.2.3 Criminal Justice Key Informant Interviews

We conducted detailed interviews with 25 practitioners in the criminal justice system and related support or service agencies. The interviewees were selected on the

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[4] The intention was to exclude incest survivors seeking counselling about molestation during childhood. Unfortunately the Centre does not collect detailed information on the timing of the assault but they do indicate if it took place within the past 30 days, within the year, or more than one year earlier.

[5] The purposes for collecting the information documented in the Centre's case files is not particularly consistent with the objectives of evaluation research. However, the data provide a rich source of information that would not be available from any other readily available sources.

basis of their experience with sexual assault complainants both before and after the 1983 amendments. In cases where high staff turnover or other difficulties reduced the number of potential interviewees from any one agency, we relaxed this criterion to include practitioners with substantial experience albeit only in the post-1983 period. The analysis, however, includes their opinions with respect to current problem areas but not with respect to changes noted over time.

Interviewees included:

- Six Sexual Assault Centre workers (four without preamendment experience);
- One doctor and four nurses working at the emergency department of the McMaster University Medical Centre (one nurse had only post-amendment experience);[6]
- Seven District Court crown attorneys (one lacked preamendment experience);
- Six defence lawyers;
- One staff sergeant (Sergeant Phil Slack) who prepared a single "force" response for the Hamilton-Wentworth Regional Police in lieu of interviews with individual detectives.[7]

The interviews, conducted in person or over the telephone, took anywhere from 20 minutes to two hours. We believe the data collected are both reliable and valid given the detailed training session given to the interviewers, the internal consistency of the responses and the detailed review of the instruments by the research advisory committee. We believe that these interviewees either include the majority of eligible respondents, or are typical of practitioners within the agency, with two exceptions. There were difficulties in interviewing doctors in the McMaster University Medical Centre emergency department (owing to lack of time) and thus we cannot assume that the opinions expressed by our five respondents are representative of those who were not interviewed. Nor can we assume that the Hamilton-Wentworth Regional Police force

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[6] The McMaster University Medical Centre is the regional medical facility designated for sexual assault victims.

[7] Although we attempted to interview members of the judiciary at the district level, we were unsuccessful in gaining the necessary co-operation.

response reflects the views of the individual detectives who investigate reports of sexual assault.[8]

2.2.4 Court Monitoring

Sexual assault trials (for charges laid under section 246) were observed during the eight-month period between February 15 and October 15, 1987 at the District Court.

The quality of the training process for field workers, the critical review of our observation instrument by our legal advisor, and the internal consistency of the completed instruments suggest that the information collected during the court observations to be both valid and reliable. We observed six of the eight trials at District Court during the study period, and we believe those to be representative of the study population. We cannot, however, assume that these observed trials reflect the trials in different time periods or sexual assault trials held at the Provincial Court.[9]

2.2.5 Survey of Victims

Victims were identified from District Court crown office files for trials held during 1986 and 1987. Ten names were provided by this approach and a self-completion instrument, with a covering letter signed by the District Court crown prosecutor, were mailed out. Two were completed and returned. The lack of follow-up measures (e.g., a second mailing of the questionnaire to nonrespondents) may have contributed to the low response rate, but this was a deliberate choice to minimize the stress for victims. This approach was unfortunately not possible with Provincial Court trials (or with cases that ended after a preliminary hearing in Provincial Court). The relevant information (names and addresses of victims) could not be released to us by the police without contravening their confidentiality regulations.

In order to bolster the pool of potential respondents, we then sent copies of the questionnaire to the Sexual Assault Centre for distribution to victims who had become involved in the Hamilton-Wentworth criminal justice system as a result of a recent assault. Between 20 and 30 copies were distributed, but only three were completed (one interview was conducted by telephone).

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[8] The Deputy Chief of Police declined to give us access to his detectives as he believed that the interview instrument was biased. In particular, he objected to a series of questions on the use of polygraphs.

[9] We did not attend Provincial court trials due to the extensive effort required to determine when sexual assault cases were coming to trial. Levels II and III sexual assaults cases are more likely to be tried at District court, so we have a cross-section of cases at all levels of sexual assault.

In addition, a telephone "hot line" was established for a three-week period in Hamilton. Residents who had been sexually assaulted were encouraged, during an extensive publicity campaign, to call the hotline, which was located in the Sexual Assault Centre, and describe their experiences.[10] This information was recorded by a trained interviewer, who worked for the Centre, using a questionnaire. Seven eligible respondents contacted the hotline: five victims and two parents of victims. (One of these victims was assaulted in Vancouver, but made use of McMaster University Medical Centre and the Sexual Assault Centre.)

We cannot extrapolate from these findings to the wider population of sexual assault victims who have had experience with the Hamilton courts. There are few responses and significant response biases likely exist. In other words, nonrespondents may differ significantly from respondents. Otherwise we believe the data collected from victims to be valid and reliable.

It is important to note that no pre-1983 information exists on the felt experience of rape and indecent assault victims with respect to their participation in the Hamilton-Wentworth criminal justice system. It was assumed that contacting victims who had been assaulted five or six years ago would be extremely upsetting for those who wished only to forget the incident or who had acquired partners who knew nothing of the past assault. The addresses in the police or crown files for preamendment cases were also likely to be out-of-date, thus posing considerable tracking problems. This decision to exclude preamendment victims was explicit in our terms of reference.

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[10] Three weeks prior to the establishment of the hot line, an explanatory letter, describing the study aims and guaranteeing confidentiality, was sent to all community and social services agencies described in the Red Book Directory for Hamilton-Wentworth. An advertisement was placed in the *Hamilton Spectator*. This paper and a local radio station also ran pieces on the hot line and the study.

3.0 CURRENT RESPONSE TO REPORTS OF SEXUAL ASSAULT INCIDENTS

In this chapter we explore the current institutional response to reports of sexual assault, based upon our review of 1984/85 police, crown and Sexual Assault Centre files, the findings from the key informant interviews and the findings from the court monitoring exercise. We begin by describing the types of sexual assault incidents that were reported to the police subsequent to the amendments and the characteristics of complainants and offenders. In the second section we focus on the question of underreporting of sexual assaults via an examination of the incidents described by callers to the Sexual Assault Centre. In the third section we consider the processing of sexual assault reports by the criminal justice system and other agencies, looking at the extent of involvement of the various agencies, and such criminal justice system outcomes as founding, charging, conviction and sentencing. Factors that are significantly associated with these decisions or outcomes are identified. The final section profiles the six sexual assault trials held at District Court that we observed during 1987.

3.1 Profile of Incidents Reported to the Police

In this first section we describe the reports of sexual assaults made to the Hamilton-Wentworth Regional Police along four major dimensions: the initial classification of the report by the police according to the various levels of sexual assault, and the characteristics of the complainant, the alleged offender and the incident. The reader should bear in mind that this profile does not describe the typical sexual assault victim or assailant as it is likely that the majority of sexual assaults are never reported to the police. Our profile is restricted to assaults for which an occurrence report was completed by the police. Secondly, although we use the terms "complainant" and "offender", not all complainants are victims, nor are all offenders found guilty of the allegations.

3.1.1 Initial Police Classification of Reports

The majority of sexual assaults that have occurred since the amendments became law (and are thus defined and processed under section 246 of the Criminal Code), and that were reported to the Hamilton-Wentworth Regional Police in 1984 or 1985, were classified by the police as sexual assault. As can be seen from Table 2, 92 per cent of reports were classified as potential Level I assaults. Six per cent were classified as Level II (usually sexual assault with a weapon) and one per cent as aggravated (Level III) sexual assault. One per cent of reports involved multiple (potential) violations of section 246, such as multiple counts under section 246.2 or potential charges under section 246.1 and section 246.2.

Table 2 Initial Police Classification of Reported Sexual Assaults (1984/85)

		Number	Percentage
s. 246.3	Aggravated sexual assault	10	1.3
s. 246.2	Sexual assault Level II - with a weapon, bodily harm or party to the offence	46	6.2
s. 246.1	Sexual assault Level I	688	92.5
	TOTAL	744	100.0

Note: If there were a number of potential charges, the report was classified according to the most severe charge. These are potential charges and may not have been actually laid.

Source: Hamilton-Wentworth Regional Police database

The distinction between the various levels and classes of sexual assault depends on the level of physical injury and other aggravating factors (e.g., multiple assailants, threat or use of a weapon, or threats to cause bodily harm to a person other than the complainant). According to the Criminal Code, "bodily harm" is defined as any "hurt or injury to the complainant that interferes with his or her comfort and that is more than merely transient or trifling in nature" (section 245.1(2)) and a "aggravated assault" is one which "wounds, maims, disfigures or endangers the life of the complainant" (section 245.2(1)). Amplifying on these definitions, crown counsel interviewees indicated that bodily harm had to be an obvious injury such as bruising or bleeding.

As can be seen from Table 2, as many as seven per cent of 1984/85 sexual assault reports involved some form of physical harm (assuming that Level II and Level III sexual assaults resulted in bodily harm). From the details contained in police files, we discovered that while 15 per cent of all reports of sexual assault to the police mentioned the application of physical force by the assailant and nine per cent mentioned the threat of harm, only three per cent recorded physical injury to the complainant.

Thus we can say that only a small minority of sexual assaults reported to the police appear to have resulted in obvious bodily harm to the complainant. Very few cases involved severe bodily harm in the sense of wounding or maiming. The numbers of potential Level III reports might be even lower than indicated here (one per cent). A review of the completed data collection instruments for these 10 reports revealed that several made no mention of any physical harm to the complainant.

Table 3 Weighted Police File

	Number	Percentage
Aggravated sexual assaults	9	1.2
Sexual assault Level II - with a weapon, causing bodily harm or party to	55	7.6
Sexual assault Level I	664	91.2
TOTAL	728	100.0

Table 3 presents the weighted database used to provide a descriptive profile of the sexual assaults reported to the police during 1984/85. In particular, we note that the weighting strategy slightly overrepresents the Level II assaults, while slightly underrepresenting the Level I assaults in comparison with their actual incidence in the population. Throughout the remainder of this chapter, the profile of sexual assaults reported to the police during 1984/85 is based upon this weighted data file.

3.1.2 Characteristics of Sexual Assault Complainants

The vast majority (83 per cent) of complainants who report sexual assaults to the police are female (see Table 4). Seventeen per cent of the 1984/85 reports were made by males. According to the national population survey conducted for the Badgley task force (on sexual offences against children and youths), about one in two females and one in three males have been victims of sexual offences. Females are both more likely to be sexually assaulted and more prone to report such offences to the police.[1]

The average age of the 1984/85 complainants, at the time they were assaulted, was 15.3 years. Twelve per cent were less than six years of age and 38 per cent were between six and 13 years old. Thirty per cent were over the age of 18. As can be seen from Table 5, male complainants tend to be younger than female complainants. No males reporting a sexual assault were 18 or older. In comparison, 36 per cent of the female complainants were 18 or older at the time they were assaulted. Eighty-nine per cent of male complainants were under 13 years of age at the time of the assault, compared to 42 per cent of female complainants.

We have limited data on the marital status and employment of complainants as there are high numbers of files without these types of background data. We found ninety per cent of 1984/85 complainants were single, never-married individuals and 81

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[1] Committee on Sexual Offences, Sexual Offences Against Children, pp. 187-193.

per cent were students. This finding is related to the fact that 70 per cent of the complainants were 18 years of age or younger.

Table 4 Gender and Age of Complainants (1984/85)

	Number	Percentage
Gender		
Female	590	83.0
Male	121	17.0
TOTAL	711	100.0
Missing cases	14	
Age		
5 or less	78	12.0
6 to 13 years	247	37.8
14 to 18 years	130	19.9
19 to 30 years	164	25.1
Over 30	34	5.2
TOTAL	653	100.0
Mean age	15.3 years	
Median age	14.0 years	
Missing cases	75	

Source: Weighted Police File

Table 5 Crosstabulation of Gender and Age of Complainants (1984/85)

(Number of Cases)

Age	Male	Female	Total
13 or less	85	229	314
14 to 18	11	119	130
Over 18	--	197	197
TOTAL	96	545	641
Missing cases			87

Source: Weighted Police File

3.1.3 Characteristics of Alleged Offenders

Before looking at the background characteristics of the alleged offender, it is important to consider the nature of the relationship between the complainant and the suspect. The majority (63 per cent) of reported sexual assaults were committed by someone related by blood or otherwise familiar to the complainant. Nine per cent were committed by a biological parent, five per cent by a step-parent and nine per cent by some other relative. Twenty-two per cent of reports involved a friend, acquaintance or neighbour. Thirty-seven per cent of reported assaults were committed by strangers. (These percentages are displayed in Table 6.)

The relationship between the complainant and alleged offender varies significantly with the age of the complainant. A minority (28 per cent) of reports, involving children or youths aged 18 or younger, involved an assault by a stranger, whereas the majority (61 per cent) of adult complainants (over the age of 18) reported an unknown assailant.

Given that a substantial minority of reported sexual assaults were committed by strangers, we found that, in a minority of cases, the suspect cannot be identified by the complainant. The proportion of nonidentifiable assailants varies from five per cent of perpetrators involved in assaults of complainants below the age of 14, 14 per cent if the complainant is between 14 and 18, and 20 per cent if the complainant is over 18 years of age. This progression reflects the greater likelihood that older complainants had been assaulted by strangers.

The people accused of sexual assault in 1984/85 were overwhelmingly male. Ninety-nine per cent of reports cited a male perpetrator(s). Ten reported assaults (one and a half per cent) were perpetrated by females.

Table 6 Relationship Between the Complainant and Alleged Offender (1984/85)

	Number	Percentage
Stranger	248	37.2
Neighbour, acquaintance or friend	147	22.1
Date or boyfriend	19	2.9
Spouse, ex-spouse or common law partner	19	2.9
Father	59	8.9
Step-parent	35	5.3
Other relative	58	8.7
Other	81	12.2
TOTAL	66	100.2
Missing cases	62	

Source: Weighted Police File

Table 7 describes the characteristics of alleged assailants. The average age of the alleged offender was 36 years. Half were between 18 and 40 years of age. Fourteen per cent were under 18 at the time of the alleged assault; seven per cent were under 14 years of age. Limited data are available on the marital status of alleged offenders. Forty per cent were single, never married; 46 per cent were married or in a common law relationship; and 13 per cent were separated, divorced or widowed.

The majority of alleged offenders had no prior criminal record according to the files that included this type of data. (Twenty-four per cent of the police files reviewed contained no information on whether or not a prior record existed). Of the remaining cases, 59 per cent showed no prior record while 41 per cent revealed one, although usually for a nonsexual offence. (If we assume that perpetrators in the reports lacking information on this factor had no previous convictions, the proportion of alleged assailants without a record would increase to 70 per cent.)

Table 7 Characteristics of Alleged Offenders (1984/85)

Gender	Number	Percentage
Male	677	98.5
Female	10	1.5
TOTAL	687	100.0
Missing cases	41	
Age		
17 or less	64	14.5
18 to 30	112	25.4
31 to 40	112	25.4
Over 40	153	34.7
TOTAL	441	100.0
Missing cases	287	
Mean age	35.5 years	
Median age	34.0 years	
Prior Criminal Record		
No prior record	326	59.1
Record for sexual offences	43	7.8
Record for other offences	183	33.2
TOTAL	552	100.1
Missing cases	176	

Source: Weighted Police File

3.1.4 Description of Incidents Reported

The majority of reported sexual assaults in 1984/85 involved a single complainant and a single offender. Nine per cent of the reports mentioned two or more offenders, and 13 per cent cited two or more victims.

The complainant had been at home immediately before the assault according to 40 per cent of the reports reviewed. Sixteen per cent of complainants had been out walking (less than three per cent hitchhiking) and 10 per cent were at a bar or party or on a date with the perpetrator.

Intoxicants were involved in a minority of cases. Fourteen per cent of offenders and eleven per cent of complainants had used drugs or alcohol.

Table 8 Characteristics of the Sexual Assaults Reported (1984/85)

Number of Assailants	Number	Percentage
One	636	91.1
Multiple	62	8.9
TOTAL	698	100.0
Missing cases	30	
Number of Complainants		
One	632	87.5
Multiple	90	12.5
TOTAL	722	100.0
Missing cases	6	
Location of the Assault		
Complainant's home	173	26.4
Offender's home	119	18.2
Common residence	71	10.8
Outdoors	137	20.9
Offender's car	42	6.4
Other	113	17.3
TOTAL	655	100.0
Missing cases	73	

Source: Weighted Police File

Assaults most frequently took place in a home, either the complainant's (26 per cent), the offender's (18 per cent) or their common residence (11 per cent). Twenty-one per cent occurred outside in a public park or street (see Table 8).

The kinds of sexual activities that comprised the assaults are displayed in Table 9. The majority of the reports (58 per cent) did not involve anal or vaginal penetration, but

rather sexual fondling of the offender or complainant, or oral sex. One third of the reports involved anal or vaginal penetration by the penis, finger or an object. The exhibit also shows the incidence of different types of sexual contact, or the percentage of reports mentioning each type of contact. Twenty per cent indicated vaginal intercourse and three per cent anal intercourse. Sexual touching of the complainant was the most frequently cited type of sexual contact, in the reports reviewed (43 per cent). Eight per cent of files contained no information on the type of sexual contact.

The type of sexual contact varies significantly with the age and gender of the complainant. If we broadly characterise type of sexual contact as penetration or sexual touching (no anal or vaginal penetration or intercourse), we find female complainants were twice as likely as males to have been penetrated (40 versus 19 per cent respectively, of reports in which information on the nature of the sexual contact was available). Complainants aged 18 or younger are also significantly less likely to have been penetrated (32 per cent) than are adult complainants (56 per cent).[2]

Table 9 **Type of Sexual Contact in Reported Incidents (1984/85) Incidence of Different Types of Sexual Contact**

	Number	Percentage
Sexual touching of complainant	312	42.9
Invitation to sexually fondle offender	235	32.3
Oral sex on offender	49	6.7
Oral sex on complainant	46	6.3
Insertion of finger or object	60	8.2
Attempted intercourse	32	4.4
Vaginal intercourse	143	19.6
Anal intercourse	21	2.9
No information	60	8.2
Base	728	

[2] All adult complainants were female.

Table 9 -- *(continued)*

Crosstabulation of Category of Sexual Contact by Complainant Characteristics

	Female	Male	Total
No information	43	14	57
Sexual touching	327	87	414
Penetration	219	21	240
TOTAL	589	122	711
Missing cases	15	2	17

	Juvenile	Adult	Total
No information	34	16	50
Sexual touching	287	80	367
Penetration	134	101	235
TOTAL	455	197	652
Missing cases			76

Note: "Penetration" includes the insertion of a finger or an object, and attempted and completed anal and vaginal intercourse. All others types of sexual contact are grouped as "sexual touching".

3.2 Profile of Incidents Reported to the Sexual Assault Centre

Not all sexual assault victims contact the police. According to the 1982 Canadian Urban Victimization Survey, 62 per cent of the sexual assaults that occurred in 1981 were not disclosed to the authorities.[3] Note that this survey was conducted before the 1983 amendments, and Hamilton was not one of the seven urban centres in which the study was conducted.

We have no data on the extent of underreporting in Hamilton-Wentworth; however, we do have some limited information on the sexual assault incidents reported to the Sexual Assault Centre (the Centre) in 1984/85. As we shall see, a substantial minority of these are not reported to the police. Thanks to the assistance of the Centre, we also have some limited information as to the reasons discouraging callers from reporting to the police.

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[3] Canadian Urban Victimization Study, Bulletin Four, *Female Victims of Crime*, p.2.

3.2.1 Characteristics of Sexual Assault Victims

One hundred and twenty-five callers to the Sexual Assault Centre in 1984/85 described a sexual assault that had occurred within the last year and had taken place in Hamilton-Wentworth. Our sample of these files involved female victims sexually assaulted by males. Thus, our sample of Centre callers differs systematically from the sample of complainants who reported to the police. Seventeen per cent of the latter sample were males.

The typical Centre caller disclosing a recent sexual assault is also likely to be older than the typical complainant reporting to the police. Two thirds (67 per cent) of our Centre caller sample were over 16 years of age compared to just under half (47 per cent) of female complainants in the sample of police files reviewed (or about 40 per cent of all complainants to the police).[4]

3.2.2 Relationship Between Complainant and Assailant

As can be seen from Table 10, 42 per cent of the sample of Sexual Assault Centre callers were assaulted by strangers. In contrast, the sample of police files reviewed show 37 per cent of reported sexual assaults were committed by strangers. The proportion of stranger assaults, however, increases with the age of the complainant. Thus, of the adult (female) complainants reporting to the police, 61 per cent were allegedly assaulted by strangers. Relative to the adult female sample who contacted the police, the Centre appears to receive relatively more calls involving nonstranger assaults. Relative to the total sample of complainants to the police, the Centre received more calls concerning stranger assaults. The differences between the stranger/known assailant ratios may not be statistically significant, especially after one corrects for differences in the age and gender of the reporting populations. Other differences between the police and Centre data on the relationship between the complainant and the assailant are trivial.

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[4] Actual age is not collected for callers to the Centre, rather the call is characterized as less than 16, or 16 and older.

Table 10 Relationship Between Victim and Assailant (1984/85)

	Number	Percentage
Stranger	38	41.8
Neighbour, acquaintance or friend	29	31.9
Father	8	8.8
Other relative	6	6.7
Husband	3	3.3
Boyfriend	2	2.2
Other	5	5.5
TOTAL	91	100.1
Missing cases	8	

Source: Sexual Assault Centre database.

3.2.3 Description of Incidents Disclosed to the Centre

Typically, the victim was at home just prior to the assault (38 per cent) or was out walking (31 per cent). Five per cent were on a date or at a social gathering and one per cent was hitchhiking. Nine per cent were receiving medical attention, counselling or legal advice. Six per cent were at work.

Given these initial situations or activities, it is not surprising to find that 43 per cent of victims who called the Sexual Assault Centre were assaulted at home, 17 per cent were assaulted outside their home and nine per cent in the assailant's car. A minority (about one in 10) of the reported assaults happened in the assailant's residence. Since almost half the files lacked information on the physical location of the assault, these figures should be interpreted with caution.

Comparisons to the police file data are problematic as the Centre serves women only and tends to focus more on the adult population. Without detailed information on the ages of Centre callers we cannot statistically control for age in order to identify differences in the two groups independent of the impact of this variable.

Relative to the total population of complainants to the police, Centre callers are more likely to have been assaulted in their homes (43 per cent versus 26 per cent of police complainants) and less likely to have been assaulted in the assailant's home or a common residence (nine and two per cent for Centre callers versus 18 and 11 per cent for police complainants).

Table 11 Characteristics of Sexual Assaults (1984/85)

Location	Number	Percentage
Victim's home	23	42.6
Assailant's home	5	9.3
Common residence	1	1.9
Outside	9	16.7
Assailant's car	5	9.3
Other	11	20.4
TOTAL	54	100.1
Missing cases	45	
Incidence of Different Types of Sexual Contact		
Vaginal intercourse	57	57.6
Intercourse	11	11.1
Oral sex	15	15.2
Molestation	18	18.2
Other	2	2.0
No information	15	15.2
Base	99	

Source: Sexual Assault Centre database

Table 11 also displays the incidence of different types of sexual contact. These proportions should be considered as minima, as a substantial number of files lacked this kind of information. If we exclude these cases, we find the majority (66 per cent) involved vaginal intercourse. Thirteen per cent of the files reviewed mentioned anal intercourse without further specification. Twenty-one per cent were simply described as "molestation", which is usually used to describe sexual touching and masturbation incidents (according to a Centre administrator).

If we compare the proportion of Centre callers reporting vaginal intercourse to the proportion of female complainants to the police reporting attempted or completed vaginal intercourse, we find that Centre callers are twice as likely to have been involved in vaginal intercourse (66 versus 30 per cent). This difference likely reflects the higher incidence of children and youths in the population of complainants who contact the police. Intercourse is more likely if the complainant is an adult.

We also have only limited data on the nature of any accompanying violence; consequently these findings can only be expressed as the incidence or percentage of

these reports that contained information on this aspect of the assault. Thus, the following figures should be considered as minima, as the counsellor may not always have learned about or recorded this dimension.

As can be seen from Table 12, a substantial minority (45 per cent) of the disclosed assaults featured the threat of bodily harm to the victim. One quarter feared for their lives. Seven per cent of assailants used a weapon. Sixteen per cent of victims were physically injured and four per cent were severely wounded or maimed as a result. Thirteen per cent were assaulted by multiple assailants.

Table 12 Incidence of Accompanying Violence (1984/85)

	Number	Percentage
Threat of bodily harm	45	45.5
Fear of death	24	24.2
Use of a weapon	7	7.1
Wounding or maiming	4	4.0
Bodily harm	16	16.2
Threat to a third person	6	6.1
Group rape	13	13.1
Base	99	

Source: Sexual Assault Centre database

Approximately one in three reports mentioned either a weapon, bodily harm or threats to a third party. If we were to use this information to crudely assign reports to the tripartite levels of section 246 sexual assault, we would find four per cent could be classified as Level III (aggravated), 30 per cent as Level II, and 39 per cent as Level I. Twenty-six per cent contained no mention of any aggravating factors nor were classified by the counsellor as Level I, II, or III. If we assume that these were Level I sexual assaults, then 66 per cent of calls could be classified at this level. (See Table 13)

Table 13 **Comparison of Reports by Criminal Code Classification (1984/85)**
(Column Percentages)

	Sexual Assault Centre Database	Weighted Police File
Level III	4.0	1.2
Level II	30.3	7.5
Level I	65.7	91.2
TOTAL	100.0	99.9
Number of cases	99	728

Note: The Sexual Assault Centre reports that had not already been assigned to one of the three Levels were classified according to remarks made about any accompanying aggravating factors. Twenty-six per cent lacked this information. These have been assumed to be Level I sexual assaults.

Relative to the police file data that showed one per cent of reports were initially classified as Level III and eight per cent as Level II, the Centre receives a higher proportion of Levels II and III sexual assault calls. The absolute differences should be treated with some caution as classification practices may not be consistent within or between these two agencies. For example, the violent or assaultive aspects of sexual assault may be perceived (and thus classified) differently by police and sexual assault workers. We have also assigned all Centre calls mentioning an injury to Level III, and this may arbitrarily overstate the incidence of severe bodily harm. Differences in the reporting populations should also be kept in mind.

3.2.4 Factors Affecting Reporting to the Police

Twenty-one per cent of the 1984/85 Sexual Assault Centre files reviewed indicated that the victim had contacted the police. This should be considered as a minimum as this piece of information was not specifically requested on the call record form and thus mention of it was at the discretion of the Centre worker.

A series of analyses was performed to determine if any systematic differences were evident between victims who report to the police and those who do not. We found no variation in reporting rates according to the age category of the victim; the relationship between the victim and her assailant, or whether or not the assault included vaginal intercourse.

We did find that the level of violence accompanying the assault and the length of time that had elapsed since it occurred significantly influenced whether or not it was reported to the police. Assaults that had occurred more than 30 days prior to contact with the Centre were not reported to the police. These victims may have been discouraged from reporting to the police (after a month or so) because of the lack of evidence to corroborate their story or fear that their failure to complain at the first "reasonable" opportunity might reflect adversely on their credibility.

Assaults with associated aggravating factors (e.g., the use of a weapon, multiple assailants, fear of death, bodily harm, etc.) are more likely to be reported than assaults that lacked these features (27 versus 10 per cent). We suspect that victims of the more vicious or traumatic assaults were more willing to report to the police because of the severity of the attack and because the corroborating evidence would be stronger.

During 1987, the Sexual Assault Centre assisted with this study by adding two questions to their usual call record forms. Callers were asked if they had or intended to report the assault to the police. Those who replied in the negative were asked the major reason(s) discouraging them from contacting the police.

We have information for 123 callers. Fifty-four per cent had already contacted the police. This is much higher than the 21 per cent noted in the 1984/85 reports. The difference may reflect missing information (the question is not normally directly posed), but it may also indicate an increased willingness over time to report to the police.

Forty-six per cent had not yet reported to the police but 22 of these 56 callers said that they intended to do so. Since one cannot assume that these latter callers would actually contact the police, thus the proportion of Centre callers who contacted the police is between 54 and 72 per cent. This contrasts sharply with the 38 per cent of sexual assault victims who reported to the police in 1981 according to the Canadian Urban Victimization Survey. One must remember, however, that the two survey populations are quite different: one is callers seeking assistance from the Hamilton-Wentworth Sexual Assault Centre in 1987 and the other a random survey of the general public over the age of 15 in 1982 in seven urban centres (excluding Hamilton-Wentworth). Thus the difference in reporting rates may be a function of systematic differences between the populations as well as geographical and historical effects.

The 34 callers (28 per cent) who did not intend to contact the police were asked for their reasoning. Twenty-five gave one or more reasons for not wishing to report (see Table 14). The most common reasons were wanting to forget the incident (48 per cent), fear that the family would learn of the assault (44 per cent), and fear of retaliation by the assailant (32 per cent). Mistrust of the police or fear of what would happen at court were cited by 12 and 20 per cent, respectively (see Table 14).

While the study populations are not comparable, it is interesting to note that the most common reasons given for not reporting sexual assaults to the police in 1981 were

the perception that the police could not do anything (52 per cent), fear of a negative attitude held by the police or courts (43 per cent) and fear of retaliation by the perpetrator (33 per cent).[5] Mistrust of the criminal justice system and the perceived futility of reporting were less important to the Hamilton-Wentworth callers.

Table 14 Incidence of Reasons Cited for Not Reporting to the Police (1987)

	Number	Percentage
Want to forget incident	12	48.0
Don't want family to know	11	44.0
Fear of reprisals	8	32.0
Fear of court	5	20.0
Futile action	4	16.0
CAS investigating	4	16.0
Assault happened elsewhere	4	16.0
Mistrust of police	3	12.0
Fear of publicity	3	12.0
Too traumatic for child victim	1	4.0
Base Number of Respondents	25	

Source: Sexual Assault Centre database

3.3 Processing of Reports and Outcomes

In the first section of this chapter we described the types of sexual assault incidents reported to the Hamilton-Wentworth Regional Police during the post-amendment study period. In this section we explore what happened as a result of the report being made to the criminal justice system. We begin by looking at the extent to which other agencies become involved with complainants. We then consider the proportion of reports that are considered as founded (or true), the proportion that result in charges being laid by the police, and the factors that help determine these outcomes. We conclude by describing the charges laid, pleas, verdicts and sentences.

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[5] Canadian Urban Victimization Survey, Bulletin One, p.7.

3.3.1 Reporting Sequence and Agency Involvement

A bare majority (55 per cent) of reports to the police are actually made by the victim. Given that half of the complainants were less than 14 years old at the time of the assault, a substantial minority of reports are made by someone other than the victim. Twenty-three per cent were made by the mother of the complainant, six per cent by the father or another relative, and seven per cent by a social worker.

The majority of reports (71 per cent) to the police were made within 24 hours of the assault. The most frequently noted reason for a delay of more than 24 hours was that the victim delayed in disclosing the assault to the person who reported to the police. This was cited in 40 per cent of the delayed reports and we suspect that these are primarily child sexual abuse cases. Other reasons for a delay were not knowing who to contact or what to do, fear of retaliation by the assailant, and because the Children's Aid was investigating the complaint.

If we consider the order in which the police, medical facilities, the Children's Aid (or Catholic Children's Aid) Society and the Sexual Assault Centre were contacted, we find that the police were the most popular agency of first contact. Seventy per cent of the police files indicated that the police were the first agency contacted. Nineteen per cent went to the Children's Aid Society first. Ten per cent sought medical attention before contacting the police. One per cent contacted the Sexual Assault Centre first. These figures are somewhat misleading as the majority of complainants had no contact with the Children's Aid Society, a medical facility, or the Centre. As can be seen from Table 15, 54 per cent had no contact with the Children's Aid (either the complainant was over 16 years of age or the protection of the child from further abuse was not at issue), almost three quarters sought no medical attention, and 94 per cent made no contact with the Sexual Assault Centre. We also suspect that police files understate the extent of involvement of the Centre as complainants may have contacted this agency subsequent to the police interview.[6]

According to the key informants we interviewed from the various agencies, both the police and Sexual Assault Centre workers place a high priority on referring (and accompanying) sexual assault victims to the hospital (the Master University Medical Centre, which is the regional centre for the treatment of adult victims) when medical attention is required or for forensic testing.

The hospital routinely informs the Centre of the arrival of sexual assault victims if the victim is not already accompanied by a Centre worker. According to the Sexual Assault Centre, about one in four of their referrals come from the McMaster University Medical Centre. The police account for less than five per cent. (The remainder are self-referrals, about half, and social service agencies, about 20 per cent.) The police

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[6] One of our victim respondents, for example, explained that she had been notified of the Centre after the police had interviewed her.

recognize the Centre as a possible referral, and the low referral rate stems from several factors. First, the police prefer to advise the victim of the existence of the Centre and allow her to determine if she wants its assistance. Thus, direct police contacts would be rare. Secondly, the police recognize that the hospital, if involved, will automatically phone the Centre. Thirdly, they do not consider incidents involving no more than "sexual touching" to necessarily require the services of the Centre.

Table 15 Sequence of Involvement of Various Agencies (1984/85)

(Number of Cases)

	Police	CAS/CCAS	Medical	Sexual Assault Centre
First contact	500	113	55	3
Second or later contact	217	164	111	31
No contact	--	322	410	508
TOTAL	717	599	576	542
Missing cases	11	129	152	186

Source: Weighted Police File

Note: The sample size varies as information on the sequence of contact was not always present. We also stress that the large numbers of missing cases may differ systematically from the cases in which this information was available.

3.3.2 Founding and Charging Decisions by the Police

Clark and Lewis, in their 1977 study of 116 rapes reported to the Metropolitan Toronto police, concluded:

> The progress of a rape case through the criminal justice system reflects a highly selective process of elimination. Only a fraction of all rapes are reported; only a fraction of reported rapes are classified as founded; only a fraction of founded cases lead to an arrest; and only a fraction of suspects arrested are convicted.[7]

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[7] Clark and Lewis, *Rape: The Price of Coercive Sexuality*, p.57.

In this section we consider the attrition of reports as a result of the decision to consider the report as unfounded, or because the police cannot lay charges. We focus on three outcomes or responses by the police to a report of sexual assault. Reports are considered as "unfounded" if the police believe the report to have been fabricated or if no crime took place. Reports are labelled as "cleared by charge" if the police are able to lay criminal charges. Reports are "cleared otherwise" (i.e., founded but not charged) if...

> the police cannot lay an information even though they feel that they have identified the offender and have enough evidence to support the laying of an information. This would happen, for example, in the case of diplomatic immunity, or if the victim refuses to sign a complaint, or if the offender dies before (s)he can be formally charged.[8]

Another common reason for the lack of charges, according to the police force response, is the lack of corroborating evidence either for the complainant or the suspect, especially if doubts are raised about the credibility of the complainant (e.g., a past history of similar complaints). This can discourage charging because a conviction at trial is considered unlikely. As Clark and Lewis have noted in connection with the crime of rape:

> The police are unwilling to push a case to prosecution if they know an acquittal is likely, because a great deal of time, energy and public money goes into the preparation of each case. Also, the police know just how difficult it is to achieve conviction in a rape case, and how reluctant crown attorneys are to prosecute problematical cases.[9]

In a minority of these cleared otherwise cases (i.e., founded but not charged), the police files indicated that no charges were laid because the accused was under 14 years of age or handicapped, the accused was under treatment, or the police considered that the sexual activity was consensual.

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[8] Statistics Canada, *Canadian Crime Statistics* (Ottawa: Supply and Services, 1986), p.18.

[9] Clark and Lewis, *Rape: The Price of Coercive Sexuality*, p.59.

Table 16 Outcomes of Reports Made to the Police (1984/85)

	Number	Percentage
Unfounded	165	22.9
Cleared by charge	194	27.0
Founded but no charge (otherwise)	360	50.1
TOTAL	719	100.0
Missing cases	9	

Source: Weighted Police File

Of the 1984/85 reports of sexual assault, police considered 23 per cent as unfounded and 77 per cent as founded. Of the founded reports, 35 per cent were cleared by charge. No charges were laid in 65 per cent of the founded reports. This cleared otherwise category comprised half of all reported assaults.

We tested a number of variables in order to determine if they would help predict, or "explain" in a statistical sense, the founding decision and the charging rate. These variables included the availability of corroborating evidence, the character and conduct of the complainant, the relationship between the complainant and assailant, and the characteristics of the offender. These variables had been suggested by Holmstrom and Burgess as defining the dimensions of the "ideal" rape victim from the perspective of the police.[10]

Table 17 displays the statistically significant relationships (based on chi-squares calculated for each bivariate contingency table) for the founding decision.[11] We found that the availability of corroborating evidence (forensic test results, other material evidence or an eyewitness), and whether or not the complainant had been injured in the assault, have no impact on the decision to consider the report as founded or as unfounded. We also found that all reports for which the suspect admitted guilt are considered as founded compared to 27 per cent of reports for which such an admission was not made or the suspect was not apprehended; however, this relationship is axiomatic.

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[10] L.L. Holmstrom and A.W. Burgess, *The Victim of Rape: Institutional Reactions* (John Wiley and Sons, 1978), pp. 41-42.

[11] Note that we only report bivariate relationships. Some of these independent or predictive variables may reflect antecedent variables or underlying variables not measured. Multivariate analyses would be necessary to determine how sets of variables coalesce to produce outcomes of interest.

The nature of the sexual contact implies different opportunities for corroborative evidence. Again, this variable is unrelated to the founding decision. If we categorize reports as involving sexual touching or penetration (anal or vaginal intercourse or penetration by an object or finger), we find no statistically significant difference in the founding rate for these two categories.

There were no significant associations between the founding rate and such variables as the gender of the victim or speed of reporting to the police (less than or more than 24 hours), but we found that the age, perceived moral character and conduct of the complainant appear to influence the founding decision. If the complainant had a prior criminal or juvenile record, or if the police suggested during the interview that the complainant was lying or inconsistent in her statements, or was promiscuous, of poor character or shared the blame, reports were 1.9 to 3.5 times more likely to be considered as unfounded compared to reports without these characteristics (see Table 17).

Table 17 Factors Significantly Associated with the Founding of Sexual Assault Reports (1984/85)

(Row Percentages)

Complainant Characteristics	Unfounded	Founded	Number of Cases	Significance
Less than 14	25.0	75.0	325	$x^2=11.17$
14 to 18	26.2	73.8	130	$p<.03$
Over 18	21.7	78.3	198	
Accused of lying	59.5	40.5	78	$x^2=20.77$
No suggestion	19.2	80.8	601	$p<.001$
Suggestion of bad character	49.9	50.1	61	$x^2=5.90$
No suggestion	21.4	78.6	588	$p<.02$
Prior record	70.9	29.1	48	$x^2=8.84$
No record	20.4	79.6	640	$p<.01$
Offender Characteristics				
Prior record	15.3	84.7	222	$x^2=4.86$
No record	22.4	77.6	323	$p<.09$

Source: Weighted Police File

Note: All tests of association and significance were conducted on the Unweighted Police File.

There was no statistically significant relationship between the founding decision and the relationship between the offender and the complainant. However, as was the case with the complainant, we note some relationship between the existence of a prior criminal record for the offender and the founding decision ($p<.09$). Reports involving suspects with prior criminal records (for sexual assault or some other offence) are marginally more likely to be considered as founded than are reports involving suspects with no prior convictions (85 versus 78 per cent).

These statistical relationships are consistent with the information provided by the police force in response to our key informant interview guide. According to this response, the decision as to whether or not a complaint is founded is based on a number of factors that must be considered simultaneously. These factors include the age of the complainant, the availability and quality of corroboration for either party, the demeanour of the complainant and the context of the incident (e.g, was it logistically possible, etc.). The police also pay attention to the elapsed time between the incident and the report and the relationship between the offender and complainant, although we found no statistical relationships between the founding decision and either of these variables. The lack of statistical correlation regarding a delay in the report may stem from the crudeness of the proxy variable we used for the perceived "reasonableness" of the length of time between assault and complaint (i.e., 24 hours or less versus more than 24 hours). As we discovered through court observation, in one situation 45 minutes appeared too long, in another situation several weeks or months appeared as not unnatural.

Table 18 displays the variables significantly associated with the charging rate for founded sexual assault reports. The availability of corroborative evidence is important: founded complaints for which corroboration exists are 2.3 times more likely to be cleared by charge than are uncorroborated reports (64 versus 28 per cent). As one might expect, there is an even stronger association between the charging rate and an admission of guilt: charges are laid in 83 per cent of reports in which the suspect admits guilt compared to 24 per cent of reports for which no guilt is admitted (or for which the perpetrator cannot be apprehended).[12]

The nature of the sexual contact is also significantly associated with the charging decision. Twenty-eight per cent of sexual touching cases are cleared by charge compared to 45 per cent of penetration cases. This relationship may reflect the greater potential availability of corroborative evidence in penetration cases.

The character and conduct of the complainant do not appear to significantly influence the charging decision. This was surprising as we noted in Table 17 that if the

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[12] The founded reports include those for which the perpetrator could not be identified by the complainant. Removing these cases would raise the charging rate for reports for which the alleged offender did not admit guilt or had no prior criminal record, thereby reducing the gap.

police report contains the suggestion that the complainant is lying or is inconsistent in relating her version of the alleged assault, the complaint is less likely to be believed (i.e., report is unfounded). Similarly, if the police report contains the suggestion that the complainant is promiscuous or was partly to blame for the assault, the complaint is less likely to be believed, although this has no bearing on the clearance rates.

There is an association between the age of the complainant and the charging rate. Complainants under the age of 14 and over the age of 18 are less likely to have (founded) reports cleared by charge compared to complainants between the ages of 14 and 18. In the case of children, this may stem from the lack of corroborative evidence. The majority of the reports involving children are sexual touching or molestation incidents rather than intercourse, and sexual touching cases rarely provide any forensic evidence. Secondly, charges may not be laid at the behest of the parents or caregivers who wish to spare young children from courtroom testimony especially when testifying against a parent. We suspect that the lower charging rate for adults likely reflects the higher proportion of stranger assaults for this age category. Unless the perpetrator can be identified and apprehended, charges cannot be laid.

The timing of the report to the police, if crudely separated into 24 hours or less and more than 24 hours, is unrelated to the charging rate. This indicator suggests that a rapid complaint is not a factor in charging, however, this breakdown may not be refined enough to capture the implications of late reporting on clearance rates. It is possible that the later the report the greater the likelihood that a complaint would be unfounded. It is certainly the case that crown and defence respondents continue to perceive the recency of complaint as an important factor in obtaining convictions/acquittals.

Finally, founded reports involving an offender with a prior record are 2.4 times more likely to be cleared by charges than are reports involving an offender with no prior criminal convictions (64 versus 26 per cent). Prior offenders may be easier to identify and locate, and may be easier to convict if the record can be introduced and is considered as prejudicial.

Table 18 Factors Significantly Associated with Charging in Founded Sexual Assault Reports (1984/85)

(Row Percentages)

	Charges Laid	No Charges	Number of Cases	Signif. Level
All cases	35.0	65.0	554	
Availability of Evidence				
Suspect admits guilt	82.7	17.2	116	$x^2=35.15$
No admission/not apprehended	23.5	76.5	400	$p<.001$
Corroborating evidence	63.5	36.5	115	$x^2=12.86$
No corroboration	27.6	72.4	439	$p<.001$
Category of Sexual Contact				
Sexual touching	28.3	71.7	339	$x^2=5.66$
Penetration	45.0	55.0	191	$p<.02$
Characteristics of the Offender				
Prior record	64.4	35.6	188	$x^2=26.01$
No record	26.3	73.7	251	$p<.001$

Source: Weighted Police File

Note: All tests of association and significance were conducted on the unweighted police file.

3.3.3 Outcomes at Court

We conclude this section by describing the court outcomes based on our quantitative analysis of the police and District Court crown files reviewed. The major outcomes of interest are the conviction rate and the lengths of sentences. We also present the perceptions of our key informants as to the factors that are critical to obtaining a successful conviction or acquittal.

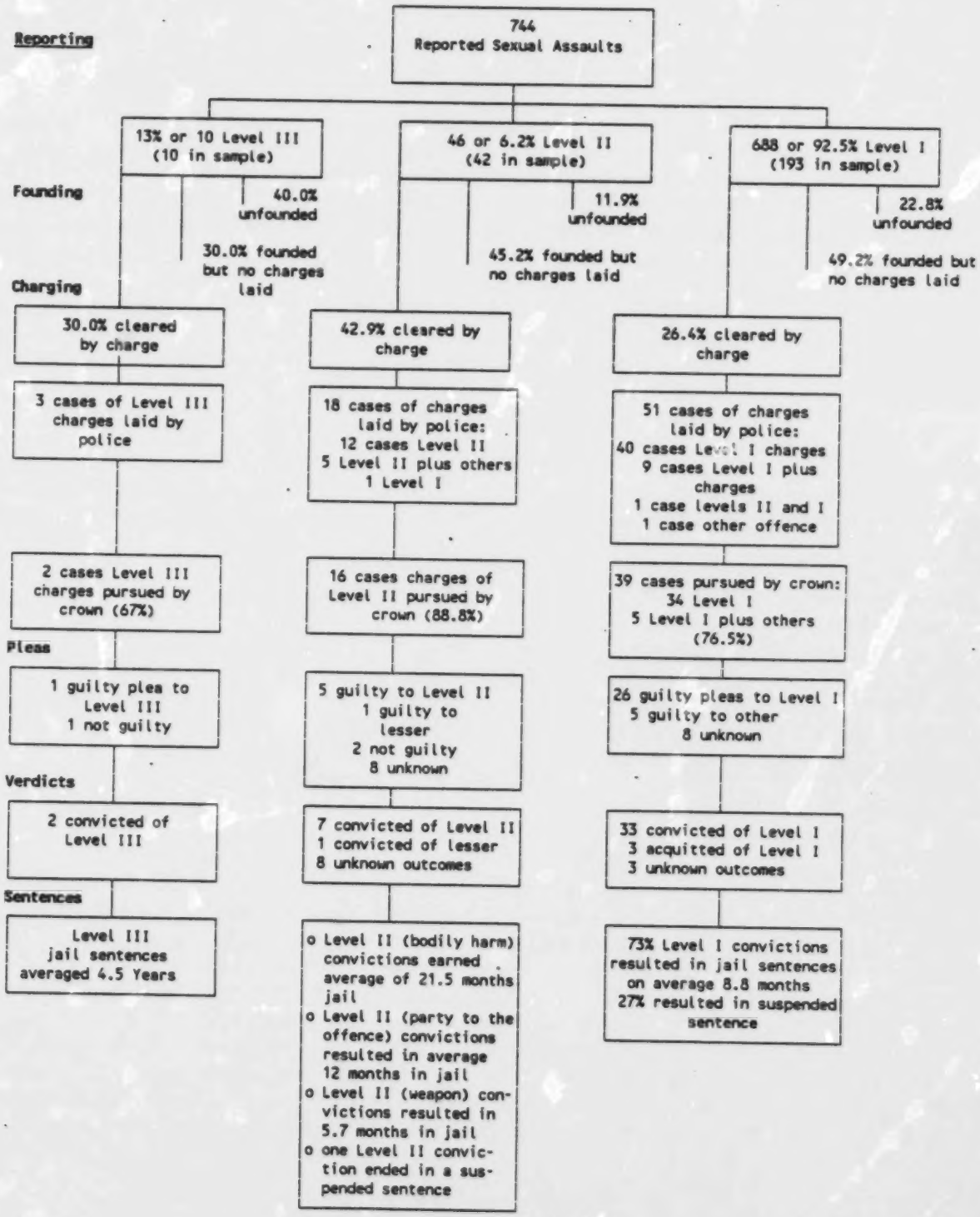
Table 19 summarizes the final outcomes from the processing of sexual assault reports by the criminal justice system in Hamilton-Wentworth. The exhibit indicates the attrition of reports by stage. The first one is the labelling of complaints as unfounded. Attrition is also

caused by the inability of the police to lay charges if the perpetrator cannot be apprehended, or is underage, if the witness is unwilling to co-operate in the prosecution, if the police do not believe charges will stand up in court, or if the case is being left open pending further information.

Charges were laid by the police in 30 per cent of all 1984/85 reports in our sample initially labelled as Level III, 43 per cent of the reports initially classified as Level II and 26 per cent of Level I reports. The differences in these charging rates are statistically significant. Presumably the reason for the lower charging rate for sexual assaults is connected to the availability of corroborating evidence (e.g., physical injury to the complainant). Many of these incidents may involve children whose parents are unwilling to permit their child to testify in court. The low apparent charging rate for Level III reports may reflect the low number of such reports available and the peculiarities of these nine. One report was considered unfounded because the complainant was under psychiatric treatment and had a history of fabricating wild stories. Another was not believed because it involved what appeared to be consensual sexual intercourse between two patients in a psychiatric hospital. (No injuries were noted in this last report, which suggests that its initial classification was erroneous.) Of the three founded but not cleared by charge reports labelled as Level III, one was on hold pending further information (the complainant refused medical attention and kept changing her story), one involved an unidentified perpetrator (and was still open a year after it was reported), and one was withdrawn by the complainant out of fear of retaliation and fear of the impact of a court trial on her friends and family.

Three Level III charges were laid by the police and two cases were pursued by the crown. One of the accused pleaded guilty to aggravated sexual assault, while the other pleaded not guilty. This latter case ended in conviction. The two Level III convictions received jail sentences averaging 4.5 years.

Table 19 Final Outcomes from Criminal Justice System Processing of Sexual Assault Reports (1984/85)
(Unweighted Police File Database)


Reporting
744
Reported Sexual Assaults
13% or 10 Level III
(10 in sample)
46 or 6.2% Level II
(42 in sample)
688 or 92.5% Level I
(193 in sample)
Founding
40.0% unfounded
30.0% founded but no charges laid
11.9% unfounded
45.2% founded but no charges laid
22.8% unfounded
49.2% founded but no charges laid
Charging
30.0% cleared by charge
42.9% cleared by charge
26.4% cleared by charge
3 cases of Level III charges laid by police
18 cases of charges laid by police:
12 cases Level II
5 Level II plus others
1 Level I
51 cases of charges laid by police:
40 cases Level I charges
9 cases Level I plus charges
1 case levels II and I
1 case other offence
2 cases Level III charges pursued by crown (67%)
16 cases charges of Level II pursued by crown (88.8%)
39 cases pursued by crown:
34 Level I
5 Level I plus others
(76.5%)
Pleas
1 guilty plea to Level III
1 not guilty
5 guilty to Level II
1 guilty to lesser
2 not guilty
8 unknown
26 guilty pleas to Level I
5 guilty to other
8 unknown
Verdicts
2 convicted of Level III
7 convicted of Level II
1 convicted of lesser
8 unknown outcomes
33 convicted of Level I
3 acquitted of Level I
3 unknown outcomes
Sentences
Level III jail sentences averaged 4.5 Years
o Level II (bodily harm) convictions earned average of 21.5 months jail
o Level II (party to the offence) convictions resulted in average 12 months in jail
o Level II (weapon) convictions resulted in 5.7 months in jail
o one Level II conviction ended in a suspended sentence
73% Level I convictions resulted in jail sentences on average 8.8 months
27% resulted in suspended sentence

We reviewed 42 of the 46 police reports initially classified as Level II plus a number of Level I cases that had potential Level II charges. Charges were laid in 43 per cent of these reports. We reviewed 18 such files.

Eighty-nine per cent (16 of 18) of these charges were pursued by the crown prosecutor according to the information available in the police files. (This figure may underestimate the actual proportion pursued by the crown if some police files lack information on final court outcomes.) In the sample of files we reviewed, the crown pursued 16 Level II charges (five with concomitant charges) and dropped one Level II charge and one Level I charge.

Of these 16 charges of Level II sexual assault, five of the accused (36 per cent) pleaded guilty as charged and one pleaded guilty to a lesser offence. Two (14 per cent) pleaded not guilty. They were convicted of Level II sexual assault. Information on the results of the crown charges is lacking for eight (50 per cent) of those charged with Level II sexual assault. Thus, for the Level II cases for which we have court outcome information, the conviction rate was 100 per cent.

The average jail sentence for a Level II offence was 11.4 months. One sentence was suspended for a Level II weapons conviction.

We reviewed a sample of 193 reports classified as Level I. Twenty-seven per cent of these were cleared by charge. The 51 (sampled) reports resulted in 50 Level I charges. One of these also had a Level II charge and nine had concomitant other charges. One report resulted in a nonsexual charge.

Of these 51 cases, 39 (76.5 per cent) appear to have been pursued by the crown. All 39 had Level I charges; five of these had concomitant charges. Six other cases were pursued but under nonsexual assault charges.

The accused pleaded guilty to Level I charges in 26 cases, five pleaded guilty to other (nonsexual assault) offences and one pleaded not guilty. Eight pleas and three final outcomes are unknown.

The average jail sentence for a Level I conviction was 8.8 months. Almost 30 per cent of convicted Level I assailants received a suspended sentence.

We also have findings from the 1984/85 crown briefs for the District Court level in Hamilton-Wentworth. The majority of sexual assault cases would have been tried at Provincial Court. This is because Level I sexual assault is a hybrid offence that can be proceeded with by summary conviction or by indictment. If treated summarily, the case is heard by a Provincial Court judge. If by indictment, the accused can elect to be tried by a Provincial Court judge, or at District Court by a judge alone or by a judge and jury.

Using the weighted police file database, we found that 74 per cent of sexual assault cases were proceeded with summarily or were presided over by a Provincial Court judge. Twenty per cent were handled at District Court and six per cent were sent to juvenile court.

Reviewing the 25 Time Two District Court crown briefs, we found one Level III sexual assault case. The charges were one count of aggravated sexual assault plus four counts of other nonsexual assault offences. The accused pleaded not guilty and was convicted of aggravated sexual assault plus four nonsexual charges. He was sentenced to a total of two years in jail (two years for the aggravated sexual assault plus six months, to be served concurrently, for the other charges).

Two cases of Level II sexual assault were heard. One involved one count of sexual assault with a weapon plus six other nonsexual offence charges. The other involved sexual assault causing bodily harm plus one count of Level I sexual assault. In the first case, the accused pleaded guilty at trial and was sentenced to two years less a day in penitentiary and was given two years probation. The result of the second prosecution is unknown.

There were 21 cases of Level I sexual assault. Six had multiple counts, either two counts of simple sexual assault (three cases) or other concomitant charges such as three counts of intercourse with a female below the age of 14 and one count of intercourse with a stepdaughter.

Seven of the accused pleaded guilty as charged. Charges were withdrawn in three cases, and dismissed in one. One accused re-elected to be tried at the Provincial Court level. One was acquitted and one received an absolute discharge. Of the nine cases involving a single count of sexual assault in that a conviction was obtained, jail sentences ranged from 90 days to four years. The average was 18.6 months. Of the five cases which involved multiple charges, the sentences ranged from 90 days to five years. The average was 28.8 months.

Crown counsel and defence lawyers were asked to identify the factors they saw as critical to obtaining a conviction or an acquittal. All seven crown counsel interviewed believed that the behaviour of the complainant immediately following the assault influences perceptions of the complainant's credibility. Despite the abrogation of the recent complaint rules, prompt complaint is still expected. One counsel noted that it helps if the complaint is made "within 15 minutes". Half of the six defence lawyers interviewed agreed that lack of recent complaint can damage the crown's case.

Corroboration is also an important factor influencing trial outcomes in the opinion of all crown prosecutors interviewed, especially if it is the defendant's word against the complainant's. Physical injury to the complainant is one form of corroboration that demonstrates the lack of consent and supports the allegation of assault.

It was the view of four of the seven crown prosecutors interviewed that the prior sexual history of the complainant is a potentially influential factor if it can be introduced. The general moral character of the complainant as perceived by the jury is also significant, according to five of the crown counsel interviewed. For instance, convictions are more difficult to obtain if the complainant invited the assailant to her home or engaged in behaviour that could be judged by some segments of society to be loose or promiscuous.

Four of the crown counsel and half of the defence lawyers also agreed that the existence of a prior relationship between the complainant and accused can make lack of consent harder to prove. Similarly, a prior record for the complainant was felt by three crown counsel to be damaging to their case if this information is used to discredit the credibility of their witness.

These opinions are consistent with the police force response with respect to the factors that influence charging and with the findings of the statistical analysis of the police file data. This was expected given the high conviction rate for sexual assault charges (when expressed as a percentage of charges pursued by the crown).

Convictions can also be expressed as a percentage of sexual assault reports. If we use this calculation, we find that about one in five reports of sexual assault result in a conviction. There is no substantial variation in the rates by level, varying from 22 per cent of Level III, 20 per cent of Level II and 18 per cent of Level I reports. This is a questionable finding as trial results were not always known to the researcher. If we assume that the unknown outcomes are in fact convictions, the rate would rise to one in three of Levels II and III sexual assault reports and 21 per cent of Level I reports. The differential impact of this "liberal" calculation is due to the fact that unknown outcomes were relatively more frequently encountered with the more serious levels of sexual assault. The reader must also bear in mind that the convictions include offences other than sexual assault.

3.4 Profile of Trials Observed

In this final section we profile six of the eight sexual assault trials held at District Court during 1987. Specifically, we describe these trials in terms of the length, timing and type of trial; the evidence presented by the crown attorney and the defence lawyer; the nature of any voir dire hearings, objections, motions and rulings; and the nature of the chief and cross-examinations. We also summarize the closing arguments presented by crown counsels and defence lawyers, the judges' instructions to the juries (where applicable) and the final outcomes (e.g., verdict, sentencing, etc.).

3.4.1 Trial Number One

Trial Number One was held in February 1987 at District Court and was by judge and jury. The trial lasted three days at the end of which a guilty plea was entered.

The complainant was a 20-year-old female, single and employed. A pretrial motion for a ban on the publication of the complainant's name was granted.

There were three accused cited in the complaint, one of whom was an acquaintance of the complainant. All three were young and unmarried men. The charges at trial were three counts under section 246.1, three counts under section 246.2, three counts of gross indecency, two counts of bestiality, two counts of buggery, one count of robbery and one count of confinement.

Witnesses subpoenaed by the crown attorney included the complainant, two police officers and two psychiatrists. However, none of these witnesses testified over the course of the trial. Instead, evidence was submitted from the crown police report only. During the remainder of the trial, frequent recesses were held as well as ongoing argument and ruling to determine the admissibility of the complainant's testimony based on the psychiatric assessment reports introduced. Some argument and ruling was also made on the admissibility of the remarks made by a second victim (involved in the assault but not the trial) in the original statement to police. A substantial amount of time was spent on the last day establishing the charge and change of plea for each accused.

According to the crown police report, the complainant was invited to a gang clubhouse on a night in the summer of 1986 by the accused person whom she knew. She was then attacked by the three accused who had been drinking and using drugs. Sexual contact included vaginal intercourse, anal intercourse and bestiality. The complainant was also kicked, punched and threatened with death. The complainant resisted physically and verbally to the attack.

Forensic evidence collected with the Adult Sexual Assault Examination kit was presented. Evidence consisted of the presence of semen and saliva on the complainant and on her clothes, as well as genital bruising and a rectal tear.

As noted, no witnesses testified for either the crown or the defence. The defence was reluctant to have the complainant testify and argued that she was incompetent as demonstrated by her history of emotional disturbances and a suicide attempt. The defence also referred to an incident in the past in which the complainant was allegedly assaulted but had not pressed charges. The judge ruled that the psychiatric condition of the complainant prior to the assault in question was not relevant and that any emotional disturbance exhibited subsequent to the assault was a result of the assault. He found that she was competent to testify.

The defence also argued that the "second" victim's comments in the original police statement were inadmissible as they constituted hearsay evidence. The judge ruled in favour of the defence on this issue.

When it became clear that the complainant would testify, the defence entered a new plea of guilty as charged. (The defence had apparently attempted to negotiate the case with the crown attorney, but the latter refused, arguing that "the victim was tortured. The evidence is strong and therefore they deserve no leniency".)

In his instructions to the jury, the judge noted that there was ample physical evidence to corroborate the charges, and that the complainant was credible even though under great stress. He urged the jury to think about the "ratio factor" involved (i.e., numerous people participated in an assault on one person).

The jury, four men and eight women, after a brief deliberation, found the three accused guilty as charged.

The crown introduced medical reports on the complainant and presentence reports for the three defendants before the sentencing. The crown called for jail sentences of 10 to 12 years, arguing that the complainant had suffered severe physical and psychological pain, that her life as a normal teenager had been destroyed and that the prognosis for a complete psychological recovery was not good. Case law precedents suggested 10 to 12 years for such cowardly and despicable acts. He also argued that the accused men had no remorse for what they had done to the complainant; rather they were worried about the impacts on their own families and their futures.

The complainant's father also testified as to the changes he had noted in his daughter as a result of the assault. Formally she had led an active social life, but since the assault, she had broken off her engagement, shied away from men, was afraid to go out without an escort, and was unable to work. Nine months after the assault she was seeing a psychiatrist three times a week.

The presentence reports recommended sentences of no more than 10 years as the young men were intelligent, came from good families, and either showed some remorse for having taken part in the assault or otherwise showed good prospects of rehabilitation. The reports argued that a sentence of 10 years would deter others and serve the public interest. A sentence (for the multiple convictions) in excess of 10 years would "damage" men as young as these.

The defence agreed with the crown attorney's recommendation concerning sentencing. No witnesses were produced for the defence. During the sentencing hearing, the judge commented that this was the most disgusting case that he had seen in 25 years and that the only redeeming feature about the accused was that they had changed their plea so that the complainant did not have to testify. The judge commented on the nature of the sexual acts performed, the level of violence offered,

and the physical and psychological damage done to the complainant, and sentenced each accused to 10 years in jail.

3.4.2 Trial Number Two

Trial Number Two was held in March 1987 at District Court and was by judge and jury. The trial took four days. The charge at trial was one count under section 246.1.

The complainant was a 19-year-old female. The defendant was a 39-year-old male, self-employed and the father of three children. The accused was a stranger to the complainant. There were no motions made at trial for a ban on publication or exclusion of any witnesses.

Fifteen witnesses were called for the prosecution. These included nine police officers, two physicians, the complainant, a friend of the complainant, her boyfriend, and a witness near the scene. No voir dire hearings were held to determine the admissibility of the testimony from these witnesses.

The police confirmed that the complainant had called to report the assault, described the details of her story as it was provided to them, identified the evidence, and related their discussions with the defendant. According to the police report, the alleged assault occurred in September 1985 in a wooded area near the work place of the complainant. The accused stopped his car and asked the complainant, who was walking home, for directions. The complainant leaned into the car to give the directions. The accused then pulled the complainant into the car, drove to the wooded area and raped her. According to the police report, the accused offered her money and threatened her with a firearm he said he had in the trunk of the car. The complainant had physically resisted. The police testified that the complainant had bruises on her arms and legs following the incident.

A physician from the emergency department of the McMaster University Medical Centre testified that the complainant had been examined following the incident and that evidence was collected with the Adult Sexual Assault Examination kit. The examination showed tenderness of the genital area and bruises on the arms and legs. Under the cross-examination, the physician testified that no trace of semen had been found.

The complainant's family doctor testified that the complainant had been experiencing very high levels of anxiety over the past few months (since the assault). The complainant's boyfriend and female friend testified that the complainant had been emotionally upset immediately following the incident. A witness near the scene (a 13-year-old boy) testified that he had seen the accused's car parked in the wooded area. These three witnesses were not cross-examined by the defence.

Questions to the complainant by the prosecution lasted two hours and 55 minutes. The complainant testified that while walking, the defendant had pulled up in his car and asked for directions. When she leaned into the car to give the directions, he pulled her into the car and drove to the wooded area. He threatened her by noting that he had a gun in the car, pulled down and ripped her clothes and penetrated her. The complainant testified that she hit the defendant with a beer bottle and ran away. She went to her boyfriend's house and called the police. During the examination-in-chief the complainant was not questioned about her past sexual history with persons other than the accused.

Cross-examination of the complainant lasted 55 minutes. The defence questioned the complainant about her identification of the accused as the offender and her consent to the acts in questions. He argued that there was a failure to struggle on the part of the complainant. There was no attempt to question the complainant about her prior sexual conduct or general reputation for chastity or character.

The defence noted a discrepancy between the complainant's preliminary hearing testimony and the trial testimony regarding the timing of the alleged assault. At the preliminary hearing, the complainant testified that the incident occurred between one and two p.m.. At the trial, she stated that it occurred between two and three p.m.. The defence attempted to discredit the complainant's testimony because of this inconsistency and because she had been mistaken in her testimony that the accused had been wearing an earring. He asked the complainant "the rape really didn't happen did it?" The defence also argued that she was lying as to the identity of her assailant (agreeing that some sexual act had been performed).

Witnesses for the defence included the defendant, the wife of the accused, relatives of the accused and gas station attendants. The accused testified that the complainant had been hitchhiking, and that he had given her a ride. The crown attorney questioned the accused during cross-examination about whether he owned a gun and his alibi for when the assault had allegedly occurred.

The wife and relatives of the accused as well as the gas station attendants testified regarding times that they had seen the accused on the day of the incident in an attempt to show that the defendant had an alibi for the time of the assault. During cross-examination of these witnesses, the crown attorney confirmed the time frame for the alibi. The crown attorney argued that the alibi corresponded to the time frame of the alleged assault as presented at the preliminary hearing, but that the incident had actually occurred later than this. The crown attorney tried to show that the defendant had no alibi for this later period.

During the closing arguments, the prosecution argued that the complainant was not mistaken as to the identity of her assailant and that the defendant had no alibi for the time of the assault. The defence countered that although the complainant had been

raped it had not been by his client, that the time element was inconsistent and the identification of the defendant shaky.

During his instructions to the jury, the judge commented on the discrepancy in the testimony of the complainant regarding the timing of the alleged assault. He suggested that the complainant could have been too upset to remember exactly when it had happened and that a discrepancy did not mean that the incident had not happened. The judge noted that the accused did not have an alibi for the time period involved and that the complainant's identification of the defendant was convincing. The judge also advised the jury that penetration did not have to occur as "mere touching" could be considered as a sexual assault.

The jury, six males and six females, found the accused guilty as charged. The accused was sentenced to five years in prison. Comments made at sentencing by the crown attorney, defence lawyer or judge, are not available due to a scheduling conflict between the sentencing hearing and another trial.

3.4.3 Trial Number Three

Trial Number Three was held in September 1987 at District Court and was by judge alone. The trial lasted three days. The charges at trial were one count under section 246.1 and one count under section 146.1 (intercourse with a female under 14 years of age). These charges had not changed since originally laid. A motion for a ban on the publication of the complainant's name was granted.

The complainant was female and was allegedly frequently sexually assaulted between the ages of 13 and 16. The complainant was 17 years old at the time of trial. The accused was the 40-year-old stepfather of the complainant. At the time of the trial, the accused was employed and in a common law relationship with a woman other than the complainant's mother.

Crown counsel called four witnesses for the prosecution. These included the complainant, the complainant's mother, a police officer and a gynaecologist who had examined the complainant in the past year. Expert witness status for the gynaecologist was established.

The complainant's testimony was sworn and lasted one hour and 30 minutes for questions directed by the prosecution. No motion was made by the crown attorney for clearing the courtroom of spectators prior to the complainant's testimony.

During the examination-in-chief, the complainant provided an account of the types of sexual activity which that during the three year period. According to the complainant, she was initially involved in touching and masturbating the accused over a period of several months. Following this, the complainant engaged in attempted and successfully completed vaginal intercourse with the accused as well as oral sex and one

incident of attempted anal intercourse. According to the complainant, intercourse occurred regularly and frequently. It occurred in the evening when the other children were in bed and her mother was out working or at bingo. The complainant testified that she was unhappy at home due to her excessive domestic and babysitting responsibilities. She testified that when she participated in sexual activity, her stepfather treated her better, for example, by letting her go out with her friends.

The complainant was questioned by the crown attorney regarding her past sexual history with partners other than the accused. The complainant testified that she had had seven or eight sexual partners. The complainant was also questioned about her failure to report her sexual activity with her stepfather at an earlier date. The complainant responded that she did not tell her friends because she thought that they would look down on her and she was afraid that she would have to leave her family.

Cross-examination of the complainant lasted one hour and 10 minutes during which the accused was present. The defence continued the line of questioning regarding the complainant's past sexual history, clarifying that the complainant had sex with seven or eight other people, and that she had stayed out all night with a boy but had lied to her parents about this. This was done for the purpose of supporting one of the lines of the defence: that is, that allegations had been made against the accused when discovery of this sexual activity with other boys by the complainant's mother was imminent. The defence also questioned the complainant about her failure to report the incidents earlier. The defence emphasized that the complainant initiated the sexual activity at times and that she had some control and could have stopped it. The complainant had testified that she had a good relationship with a guidance counsellor at school who had mentioned that children would be removed from a home (by the Children's Aid Society) if sexual abuse was occurring. The defence lawyer suggested that the complainant got the idea of making the allegations as a result of these discussions in order to get out of the home. He established that the complainant resented her situation at home because of the restrictions placed upon her by her stepfather. The defence also noted a discrepancy between the complainant's preliminary hearing testimony and trial testimony. At the preliminary hearing, the complainant testified that she reported the abuse to get out of the house. At trial, she said that she reported the abuse because it was wrong.

On one occasion, argument and ruling was made regarding the defence lawyer's intention to question the complainant about her refusal in the past to take a lie detector test and her refusal to seek psychiatric counselling. The judge objected to both lines of questioning as irrelevant: that lie detector tests have been unreliable in the past and that the complainants emotional state had not been made an issue in this case. The defence did not pursue these lines of questioning.

The judge also questioned the complainant about her reasons for not reporting the abuse earlier. The complainant repeated the reasons she had given during the examination in chief.

The complainant's mother testified that the complainant had a lot of responsibilities at home, but that the accused periodically treated all members of the household harshly. During the time period of the alleged abuse, the accused had generally treated the family members better than normally. She provided an account of the times that she had been out of the house in the evening.

The complainant's mother was cross-examined by the defence and testified that during the time period of the alleged abuse, the accused's treatment of the family had improved as had the family's financial situation. The complainant's mother testified that she could not remember if she had discussed the details of her testimony recently with the prosecution.

The police officer testified that he had given the complainant several opportunities to withdraw her allegations if the story was not true. He had conveyed to the complainant the importance of telling the truth.

The gynaecologist testified that the appearance of the complainant's vaginal opening had been consistent with frequent vaginal intercourse. The Adult Sexual Assault Examination kit had not been used as the alleged assaults had ceased some four months before the examination.

The gynaecologist was questioned during her cross-examination about the likelihood of pregnancy, given the alleged frequency of intercourse over the time period in question. She responded with the statistical occurrence of pregnancy in cases of alleged sexual abuse (twice in 157 cases). She also testified that it was possible that the appearance of the vaginal opening could be consistent with intercourse with seven or eight partners although she doubted that it would be consistent with few partners.

The defendant gave testimony regarding the times when his wife (at the time) was out of the home (i.e., opportunities for intercourse) and the sleeping arrangements for the other children. He testified that he often had to pick up his wife in the evening and that the other children slept downstairs as well as upstairs. The accused had some difficulty in estimating the time required to collect his wife. He testified that he did not view his stepdaughter as different from other children. He denied that any sexual contact had occurred between himself and the complainant.

During cross-examination, the accused testified again regarding the length of time that his wife was absent in the evening and noted that the other children were allowed to get up at night. The accused said that although his daughter did more than her share of housework, but he did not think that he had taken advantage of her in this regard. He denied that he saw her as different from the other children (i.e., in a wifely role) and that he took advantage of her sexually. No other witnesses were called for the defence.

In his closing arguments, the crown attorney emphasized that the complainant had been habituated to sex with her stepfather, who treated her as a surrogate wife. She was afraid to complain because the behaviour of the accused improved after she had had sex with him and because she feared being separated from her family. The prosecutor argued that she was credible as a witness because she had no malicious motive to fabricate such an allegation, and that she had been very candid about the sexual activities she had engaged in when she could very easily have lied about them. In contrast, the crown attorney pointed out that the demeanour of the accused was very strange. He noted that there had been many opportunities for intercourse to have occurred and reminded the judge that no corroboration was required and that the recent complaint rule had been abrogated.

The emphasis of the closing arguments by the defence was that the lack of emotion on the part of his client did not signify guilt, that the complainant had demonstrated a tendency to lie and had good reason to fabricate the allegation (as she was afraid that her mother would find out that she was no longer a virgin). He also pointed to discrepancies between the complainant's and the mother's testimony regarding how the complainant was treated at home. In his view, she had concocted the idea of fabricating the allegation because she believed that the Children's Aid Society would remove her from the home. The defence lawyer also argued that it was highly unlikely that the incidents of intercourse had actually occurred because the other children had not observed them.

The judge found the accused guilty of one count under section 246.1 and guilty of the attempt to commit sexual intercourse with a female under 14 years of age (section 146.1). The judge stated that the complainant's testimony was credible and that while she was able to answer all questions without hesitating, the accused had trouble answering very simple questions. The judge emphasized, in keeping with earlier precedents (i.e., *Regina vs. Hester, Regina vs. Kamp*) that the onus was on him to be certain of guilt in the absence of corroborating testimony. The judge also stated that if "consent" was involved in this case, it was obtained through the abuse of the parent-child relationship, which invalidated the consent.

The crown attorney enumerated several reasons for a substantial penitentiary sentence: the "scars" caused to the complainant would be long-lasting; the accused had callously used the complainant for his sexual gratification and showed no remorse; and to deter others. The defence asked for something less than four years as the defendant was essentially a first offender (only one drunk driving charge 14 years ago), there had been worse cases in which the child was very young or violence had been applied, (a worse case had resulted in a four-year sentence, therefore the sentence here should be less), and the accused still had financial obligations to the family that could not be met if he were in jail. The presentence report discussed the good employment history of the accused, the fact that his employer would be willing to rehire him in the future, the one prior conviction and the ongoing financial obligations to the family.

The accused was sentenced to four years in a penitentiary. During the sentencing the judge expressed his disgust at the revolting nature of the offence, stating that incest, especially between a father and a young daughter, was morally repugnant.

The judge called the accused's offence one of lingering lust and noted that it occurred frequently and over a long period of time. He said that the complainant in the case was psychologically scarred as a result, but had showed remarkable psychological stability after what she had been through. The judge stated that the presentence report had been acknowledged but could not be given much weight. The sentence had to deter such offences.

The defence has subsequently filed for an appeal against the verdict. The appeal judge has reserved judgement about the validity of the appeal.

3.4.4 Trial Number Four

Trial Number Four was held in the summer of 1987 at District Court and was by judge and jury. The trial was three days long. The charges at trial were one count under section 246.1 and one count under section 306.1(a) -- break and enter with intent to commit an indictable offence. A pretrial motion was made by the judge for the exclusion of witnesses, with the agreement of counsel.

The complainant in the case was a 26-year-old female, employed and living with her children. The accused was a 28-year-old male, single and employed. The accused was the ex-boyfriend of the complainant.

Witnesses for the crown attorney included the complainant, a friend of the complainant, the sister of the complainant and a Sexual Assault Centre worker. A voir dire hearing was held to determine the admissibility of the complainant's original statement to the police. Sexual reputation evidence was deleted from the police statement in accordance with section 246.7. Argument and ruling was also made on the admissibility of conversation between the two parties earlier on the night in question and of past correspondence between the complainant and the accused. The former was ruled admissible. The crown wished to introduce the latter in order to show that an earlier relationship had terminated and that the accused had feelings towards the complainant that were not reciprocated. The judge deferred making a judgement on the admissibility of this evidence until after testimonies were heard.

The complainant's testimony for the crown was sworn and lasted 45 minutes. The complainant was called to the witness stand twice by the crown attorney. The complainant testified that she had dated the accused in the past and that they had met at a dance in the summer of 1986, on the night of the alleged assault. Both had been drinking. She testified that she and the accused had an unpleasant conversation and that she refused his subsequent invitation to dance. She stated that she went home

early, left her door unlocked and woke up to find the accused in her bed and attempting intercourse. She said that she struggled with the accused and he left. The complainant saw the accused the next day at a baseball game and called the Sexual Assault Centre and police that same day.

Cross-examination of the complainant lasted 50 minutes during which the defence did not question her about her past sexual history or reputation. The defence noted inconsistencies between the complainant's testimony at the preliminary hearing and the trial. The complainant said at the preliminary hearing that she had gone to the baseball game to intimidate the accused, but at trial said that she went only partly to intimidate the accused. There was also a discrepancy in the timing of the call to the police, and although at the preliminary hearing she had claimed that she had not asked for a particular officer, at the trial she stated that she had.

The defence attempted to discredit the complainant's statement by questioning her consumption of alcohol at the dance and by emphasising her failure to lock the door that night or to scream for help. The defence noted that though the complainant expressed her fear that the accused might still be in the house following the incident, she did not call for help or the police at that time. He also referred to her calmness in relating the story to her sister and girlfriend. The defence asserted that no sexual assault had occurred and that the accused believed that he was allowed entry into the house (therefore he was innocent of the break and entry charge).

The accused was the sole witness for the defence. He testified that he had had a lot to drink on the night of the alleged assault, and that although he and the complainant had had a friendly conversation earlier in the evening she had refused his subsequent invitation to dance. The accused further testified that, following the dance, he called the complainant from a bar and suggested that he would visit her. She did not tell him not to ("was not dead set against it"), and when he arrived, the door was unlocked. As she did not respond to his knocking, he called her from a phone booth to re-iterate that he was coming over. As the door was still unlocked upon his second return to the house, he let himself in, and went to the complainant's room where they talked some more.

During cross-examination of the accused, the crown attorney introduced portions of the statement made by the accused to the police. In this document he had stated that he went straight home after the dance, and the next morning did not recall any incident from the night before. There followed a discussion of the admissibility of portions of the statement during cross-examination. The defence objected to the editing and the timing. (Editing was considered as necessary in order to remove sections that dealt with the sexual reputation of the complainant.) The crown attorney pointed out discrepancies between this statement to the police and the defendant's testimony at trial. Further to this, he doubted that the accused and the complainant had had a long conversation given her unfriendly attitude to him at the dance or that the accused had not entered the complainant's home the first time that he arrived there.

During re-examination, the accused testified that he was intimidated by the police during his statement and was confused about what to say.

In closing, the defence argued that the jury had to choose between the word of the accused and that of the complainant. He suggested that there were a number of reasons not to believe the complainant: the animosity between the complainant and the accused may have spurred her to make a false accusation;, her door was unlocked; the complainant did not cry for help; her children did not wake up; she went back to sleep after the alleged assault even though she feared his re-entry; witnesses of the next day had different versions of what had happened; there were no bruises; semen or torn sheets, which should have existed if her version of events was actual; her conduct was inconsistent with her complaint; and that the allegation of sexual assault was easy to make but hard to disprove.

The closing arguments of the prosecution emphasized the following points: that allegations of sexual assault are not easy to make but are the start of an ordeal for the complainant; that no motive had been demonstrated by the defence for fabrication; that there is no "normal" or typical behaviour for rape victims; that the complainant had only said that intercourse had been attempted, therefore one should not expect traces of seminal fluid; that the assault was not "vicious" therefore the lack of injuries was not inconsistent with nonconsensual sexual activity, she had not screamed but had employed a different strategy to make him leave that had been successful; and that the complainant's narrative of the events were more consistent and reasonable than that of the accused (why did the complainant not remember his phone calls? if he had such an urgent need to talk to her about unresolved issues regarding their break-up, why was he content to talk about trivial issues and why did he leave when asked?)

In his instructions to the jury, the judge advised that the past criminal record of the accused (for a nonsexual crime) should only be viewed as a means to assess his credibility and not as a propensity to commit another offence. The judge provided a Criminal Code definition of sexual assault adding that there was no sexual assault if the jury believed that there was consent. He instructed the jury to consider any evidence that supported one version of the story over the other. The jury (of seven men and five women) found the accused not guilty to both charges.

3.4.5 Trial Number Five

Trial Number Five was held in fall of 1987 at District Court and was by judge and jury. The charge at trial was one count under section 246, Level II. Motions were made by the crown attorney for the exclusion of witnesses from the courtroom and for a ban on the publication of the complainant's name. Both were granted.

The complainant was a 34-year-old female, single and employed. The accused, who was a complete stranger to the complainant, was a 34-year-old male, employed as a labourer. He was married and the father of two children. The alleged incident had occurred a year earlier.

Eight witnesses were led by the crown attorney. These included the complainant, two friends of the complainant, three police officers, the complainant's family doctor, and an analyst from the Forensic Sciences Centre in Toronto. No voir dire hearings were held to determine the admissibility of any testimony. The expert status of the family doctor and forensic analyst was established.

The complainant's testimony was sworn and lasted 40 minutes for questions directed by the prosecution. The complainant testified that she had been introduced to the accused by friends at a bar and that she had agreed to drive him from the bar to her friends' home for drinks. She testified that she had had one or two drinks at the bar and that no sexual activity between herself and the accused had occurred while there. Following some dancing and conversation at her friends' home, the complainant had offered to drive the accused to his home and, when parked in the driveway, the accused had asked the complainant to talk to him for a while. As they talked the accused kissed the complainant and attempted to undo her pants. The complainant testified that she asked the accused to stop and that he complied.

While the complainant was driving, the accused stated that he wanted to go to his brother's home, which was in a different direction. The complainant testified that after she took a wrong turn, the accused insisted on driving. He then drove to a deserted area, pulled the car off the road and parked in an orchard. He told the complainant that they were going for a walk and ordered her to bring along a blanket that was in the car. The complainant testified that the accused became very angry at her and said that she had been leading him on and that he would have to teach her a lesson. She stated that she was very frightened and that, when she said that she did not want to go with him, he grabbed her and pulled her out of the car. The complainant testified that the accused attempted oral sex with her, but that she gagged. He then tried anal and vaginal intercourse and, when his attempts were unsuccessful, he screamed at the complainant that she was not even any good for sex. On one occasion the accused pulled her hair and, on another, forcefully inserted his fingers into her vagina. The complainant testified that the bruises on her legs were from being pulled from the car and that her pantyhose had been torn while the accused was trying to pull them down.

Following the alleged assault, the complainant testified that the accused drove back into town, invited the complainant to go for coffee and, when she refused, he got out of the car. She then drove to her home, called the friends that she had been with earlier in the evening and then called the police.

Cross-examination of the complainant lasted 50 minutes during which the complainant was not questioned about her past sexual history. The defence questioned

her about her use of alcohol that night and established that she could not remember exactly how much she had had to drink. He questioned her about the nature of physical contact with the accused during their visit at the friends' home. The complainant testified that the accused had kissed her while parked in the driveway. The defence suggested that the kiss between them had been consensual, and that the complainant had also participated in consensual intercourse while parked in the driveway and later in the orchard. The complainant denied these allegations.

The defence suggested that the complainant's pantyhose was torn on the car console during intercourse in the car. Further, when the complainant learned at the end of the evening that the accused was married, she felt used and angry and wanted revenge. The complainant also denied these allegations. The defence questioned the complainant about her failure to get out of the car or attract attention when the opportunity arose, and about her judgement in driving home a man whom she had never met before. He doubted her claim to have taken a wrong turn since she knew the area so well and also her claim that she did not know about the regional sexual assault unit given her employment at a hospital. The complainant testified that she was not aware of the regional sexual assault emergency facility and that, when the police had told her about it, it was too late for an examination.

Both friends of the complainant testified that the complainant and accused had arrived at their home together, that they had danced together and that no sexual activity between the two had been observed. They also testified that the complainant and accused were alone and talking when they went to bed and that the accused wanted to stay until the fire went out. Both friends testified that the complainant had called them two hours later and that she was hysterical at the time.

The defence cross-examined the friends of the complainant about what the complainant and accused had had to drink, what kind of conduct occurred between them at their home, and when the complainant had called them. There were inconsistencies in cross-examination testimonies regarding what the complainant and accused drank and over the time of her phone call.

The police officer who took the complainant's call testified about the time of the call and noted that when he saw her at her home shortly after her call, the complainant was very upset and "broke down" several times while he was questioning her. So far as he knew, she had not changed her clothing. The second investigating police officer interviewed the complainant at the police station. He identified the exhibits that were entered (i.e., blanket, pantyhose and underwear of the complainant, and photographs of bruising that were taken the next day). He stated that the complainant had not been taken for a forensic examination because she had stated that no sexual intercourse had occurred. The third investigating officer testified that the complainant's car had dirt and dust on it or the day following the incident. These officers had conducted the investigation, and had interrogated the accused and had taken his statement. During

their testimony they described the incident based upon the statement made by the complainant.

The police officer who received the complainant's call was cross-examined about whether or not the complainant had changed her clothes before she was taken to the police station. The officer testified that he was not sure about this. The first investigating officer was questioned about why the complainant had not been taken to the hospital. The officer testified that the complainant had told him that there had been no sexual intercourse. The officer denied having told the complainant that it was too late for an examination. The officer also testified that photographs of bruises on the complainants legs had been taken on the day following the incident and not on two consecutive days when bruises could be optimally assessed. The officer testified that the blanket, which was entered as an exhibit, had not been sent for analysis until the request was made by the defence at the preliminary hearing. The second investigating officer testified that he thought the condition of the complainant's car was not conclusive of anything and that it did not necessarily support the complainant's contention that the accused had forced her car down an incline. He also testified that the investigating officers had not at any time during the investigation examined the scene of the alleged assault, and that the complainant's keys, which were supposedly removed from the ignition with force, had not been examined.

The medical expert testified that she had examined the complainant four days after the alleged assault and had not seen evidence of trauma to the genital area. She testified that the complainant had been very upset during the visit and had said that "she did not know if she had been leading him on". She also testified that she had referred the complainant for counselling five years earlier following an emotional breakdown. The crown attorney asked the medical expert if she thought that the complainant's behaviour was consistent with the behaviour of a victim of assault. The defence objected to this question stating that experience as a practitioner of family medicine did not qualify the witness to offer such a speculation. The question was allowed and the doctor testified that she would have to base her answer on her readings of the relevant literature rather than on her own experience. This line of questioning was not pursued.

The medical expert testified during cross-examination that bruising, if it had occurred at the time of the assault, might not be present four days later, although scratches would still be present. She testified that if fingers had been forcefully inserted into the vagina, there might be bleeding immediately afterwards. The doctor repeated, in cross-examination, that the complainant had told her that she did not know if she had led the accused on, and that the complainant's earlier emotional breakdown had occurred following the end of a relationship with a man.

Prior to his testimony, the forensic expert was questioned regarding the potential results of a preliminary analysis of the complainant's underwear, should an analysis be completed at this time. Argument and ruling was then made on whether or not this analysis should be completed, and on the admissibility of the results as evidence. The

judge ruled that this analysis should have been completed at an earlier date and that the analysis would not, at any rate, be conclusive of anything.

The forensic expert testified that he had analysed the blanket that had been entered as an exhibit and that his analysis revealed leaves and dirt on the blanket.

The forensic expert testified during cross-examination that there was evidence of one hair on the blanket, which had been analysed. This hair had fallen out naturally as opposed to being forcibly removed.

The defence led the accused as a witness. The accused testified regarding the details of his meeting the complainant, his alcohol consumption and the nature of his sexual contact with the complainant on the night of the alleged assault. The accused testified that he had kissed the complainant's neck while they were dancing at her friends' home and that she had consensually participated in attempted vaginal intercourse in the car while parked and later in completed vaginal intercourse in the orchard. He denied all allegations that had been made by the complainant. He testified that when they had returned to town, he had told her that he was married, at which point she became very angry.

During his cross-examination, the accused testified that he had deliberately concealed his marital status from the complainant and that he had been callous towards her. He said that the complainant agreed to let him drive, that they had both decided to stop at the orchard and that she had voluntarily participated in having sex with him. The crown attorney introduced the statement made by the accused to the police for the purpose of pointing out the inconsistencies in his testimony about what had occurred in the orchard. The defence re-examined the accused in order to show that the accused was under duress during questioning and had to answer many questions directed at him by two police officers. The defence also called a co-worker of the accused as a character witness.

The closing arguments by the prosecutor emphasized that the accused had lied to the complainant about his marital status thus demonstrating his disregard for her feelings. If the accused was so concerned about being seen, why attempt sex "under a spotlight" in the driveway? Why not go to her place? Why did the friends not notice any romantic undercurrents or activities between the two if it was consensual? In the prosecutor's view, the dirt on the car confirmed that the car had been forced off the road.

The defence argued that the jury must acquit if they had any doubt about the guilt of the accused. He noted that the accused had waived his rights and had volunteered a statement to the police that was consistent in its particulars. In contrast, the police and the complainant disagreed on several points (e.g., whether it was too late to have an examination). In the defence lawyer's view, the complainant's past psychiatric history also cast doubt on her credibility. In addition, he also argued that

there were no physical injuries from being dragged (the bruising could have come from consensual intercourse or some other activity); that she failed to take advantage of any opportunities to escape, that although she complained of being traumatized she had not sought counselling; that although she denied intercourse had taken place she had later sought an examination for V.D.; and that she felt angry at being used (by a married man), and had therefore claimed consensual intercourse was sexual assault.

In his instructions to the jury, the judge defined "sexual" as "anything involving sexual gratification or reproduction", "assault" as "the intentional application of force without consent" and "bodily harm" as "any hurt interfering with comfort, more than transient and trifling in nature". The judge advised the jury to consider whether there was an "honest belief" in consent on the part of the accused or an absence of consent and, in determining whether there was consent, to consider carefully witness testimony together with the physical evidence presented. He noted that there were discrepancies in witness testimony regarding the earlier events of the evening, but that these were not of a serious nature.

The jury of six men and six women returned a verdict of guilty to one count of sexual assault, Level I.

The defence lawyer introduced a presentence report at the sentencing hearing. This said that the accused had had a conviction for impaired driving and failure to appear, but that these were more than 10 years old. The accused had an excellent employment record over the past 11 years. He also had financial obligations for his two young children. The report also said that he was remorseful and would not repeat the offence. The defence recognized that incarceration was required. He cited five cases involving similar offences and first offenders (one at the Court of Appeal) that resulted in sentences of 18 months to two years less one day.

The crown counsel pointed to such aggravating factors as buggery and fellatio as well as attempted rape, noting that these activities had occurred over a number of hours. He argued that the complainant had suffered great emotional trauma and was now afraid to go out alone or on a date. The accused only felt remorse for himself, not for the complainant.

The judge noted that the conviction had been for the less serious Level I offence, although the initial charge was Level II. The jury had found the accused guilty despite some discrepancies in the testimonies received. Given how upset the victim was in court, he argued that the sexual activity was clearly nonconsensual. He saw no reason to depart from the sentencing lengths established in the five cases cited and sentenced the accused to two years less one day in reformatory. He said he would not object to participation in a temporary absence program. The defendant has since appealed against the verdict.

Commenting later on the case, the crown prosecutor indicated that no attempt had been made to plea bargain. He believed that the weaknesses in the prosecution's case were the lack of forensic evidence (none collected), the minor nature of the injuries sustained, and the prejudicial impact of the prior psychological history on the credibility of the complainant. On the other hand, he believed the complainant was very credible on the stand. He believed that the sentence was consistent with those handed out for similar offences.

3.4.6 Trial Number Six

Trial Number Six was held in September 1987 at District Court and was by judge alone. The trial lasted one day. The charges at trial were one count under section 246.1 and one count under section 306.1. A motion, made by the crown attorney for a ban on the publication of the complainant's name, was granted.

The complainant was a 28-year-old female who was physically handicapped and speech impaired. The accused was a male acquaintance of the complainant (actually a friend of the complainant's neighbour), and was employed as a taxi driver.

Witnesses for the crown included the complainant and three police officers. No voir dire hearings were held to determine the admissibility of witness testimony.

The complainant's testimony for the crown was sworn and lasted 20 minutes. The complainant testified that on the night of the incident (one year ago) she was in her bed, undressed and had her bedclothes pulled up. She testified that the accused came into her room, pulled her bedclothes down and touched her breast and vagina.

Prior to cross-examination of the complainant, argument and ruling was made on the admissibility of questions regarding a report of sexual assault, similar in nature, that the complainant had made in the past. The defence argued that this line of evidence was relevant to determine the complainant's state of mind and that her state of mind was an issue relevant to the trial. The judge ruled that this line of questioning was irrelevant.

Cross-examination of the complainant lasted 30 minutes during which the complainant was not asked about her past sexual history. The complainant was questioned about why she had waited so long after the incident (45 minutes) before calling the police. She said that she had waited because she was not sure if it was "serious" enough to report.

The complainant, questioned about why she had left her door open that night, testified that she thought the door locked when she went to bed. The defence also brought out an inconsistency between the complainant's original statement to police and her testimony at the preliminary hearing. In her original statement she said that she was

awakened by the sound of the door opening. At the preliminary hearing she stated that she was awakened by "pounding" at the door. The complainant testified that she had forgotten and that it was in fact a pounding sound that had awakened her.

When the police first responded to the complainant's call on the night of the alleged incident, they had received a bulletin for a disturbance of an unspecified nature. Upon arriving at the complainant's apartment, they were unable to determine the nature of the report since they could not understand what the complainant was saying. The police officers left the apartment five minutes after arriving unaware of the complainant's attempt to report a sexual assault.

Approximately 10 days later, the superintendent of the apartment building in which both the complainant and accused reside, called the police station on behalf of the complainant to inquire about the investigation. Since the police did not have a report or record for any incident involving the complainant, another police officer was sent to take the report.

The reporting officer testified that he was able to understand the complainant at the time he took the report, and that the manner in which the complainant had testified in court was much the same as on the day he took her statement.

The police officers who interviewed the complainant were cross-examined for the purpose of establishing that the ability (or inability) of the complainant to accurately communicate what had occurred seemed to vary.

The accused was the sole witness for the defence. He testified that he had been drinking after work and decided to go looking for his "buddy" that night. He thought that he might be at the complainant's apartment since they knew each other. He testified that he knocked on the complainant's door and called her name. Finding the door open, he decided to go in and see if she was all right. He testified that he was concerned when she did not answer so he went into her room and touched her on the shoulder. The defendant also testified to his prior criminal record for fraud.

During cross-examination, the crown attorney attempted to discredit the accused's testimony by saying that he had no reason to enter the complainant's room and he had no reason to be concerned about her safety. The crown attorney also suggested that such a late night visit probably indicated dishonourable intentions.

In the closing arguments, the defence emphasized the length of time the complainant waited before calling the police and her varying ability to articulate what had happened. He argued that knowing that the complainant was handicapped, the accused had become concerned about the unlocked door and had understandably gone in to investigate.

The prosecution argued that the accused was trying to make himself look like a Good Samaritan, but that his reasons for entering the complainant's apartment were not credible.

The judge found the accused not guilty of both charges. He expressed concern about the credibility of both testimonies (accused's and complainant's) but thought that the complainant had been the least credible. He noted the discrepancy between her original statement to police and her statement at the preliminary hearing. He commented on her hesitation about calling the police and the lack of corroborating evidence. He suggested that the incident seemed to have happened quickly, and that she might have been mistaken about what had occurred.

4.0 IMPACTS OF BILL C-127

The 1983 amendments were expected to improve reporting and conviction rates and alter attitudes towards the nature of the crime. As well, they were expected to improve the experience of victims with the criminal justice process. Our purpose in this chapter is twofold. First, we will identify any changes in the (i) type of person coming forward or the type of offence being reported, (ii) the way in which sexual assault reports are processed by the criminal justice system, and (iii) the final outcomes from the involvement of the police and courts. Secondly, we will attempt to discern to what extent the 1983 amendments are responsible for any observed changes and to what extent other factors may be causing, enhancing or retarding the realization of the intended impacts of the legislative amendments.

As discussed earlier, our ability to attribute causality of any observed changes to Bill C-127 is severely limited. Other factors, such as independent changes in the way the mass media portray the crime, improved public awareness and education, or changes in the internal organization, policies or resources of front line agencies, might account for any changes observed. In order to disentangle the relative role of Bill C-127, we rely on logic (are the changes plausibly related to the legislative amendments?), careful manipulation of the quantitative data to statistically control for changes in the reporting population, and the expert opinions of our key informants.

The major line of evidence used is the quantitative data collected from the review of police files for 1982 and 1984/85.[1] The preamendment period information is referred to as Time One and the post-amendment information as Time Two.

Table 20 presents the numbers of reports made to the police during the three year period broken down by the most serious possible charge. The first two columns present the population of cases reported to the Hamilton-Wentworth Regional Police during 1982 and 1984/85 for which the police completed an occurrence form. The third and fourth columns present the cases included in our Time One and Time Two samples.

As noted in Chapter One of this report, the sample differs from the population in two important respects. First, the proportion of cases in our sample of Time One reports involving rape or attempted rape is significantly greater than the incidence of these cases in the population of reports made to the police in 1982. This has resulted in the proportion of cases in our Time One sample involving indecent assaults against females being marginally less than the actual incidence of these reports in the population of 1982 police reports.

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[1] As mentioned earlier, 1981 police occurrence reports were not easily accessible because the police computer file, which classified report numbers by Criminal Code section, did not contain 1981 report numbers.

Second, our Time Two sample overrepresents the more serious Level II and Level III assaults in comparison with the incidence of these cases in the population of police reports. In contrast, the Time Two sample significantly underrepresents Level I sexual assaults in comparison with the incidence of these cases in the population of police reports during 1984/85 for which the police completed occurrence forms.

As most of the information collected was nominal or categorical, tests for statistically significant changes over time were primarily conducted using chi-squares calculated for contingency tables. All results reported are significant at the .05 level or better, unless otherwise noted.

The remainder of this chapter is organized into three major sections: changes in reporting, changes in founding and charging rates, and changes in final court outcomes. In each section we identify the nature and extent of any changes noted and the expected causal factors.

4.1 Changes in Offences Reported

In this first section, we compare the Time One and Time Two reports to the police along such dimensions as the number of reports made to the police, the characteristics of the complainant, the characteristics of the assailant and the nature of the assault.

4.1.1 Number of Assaults Reported

Examining the first two columns in Table 20, we see that the absolute number of reports of sexual offences reported to the police each year increased from 268 in Time One to 372 per year in Time Two.[2] This is a 39 per cent increase. This increase is far in excess of what could have been expected on the basis of net population growth in Hamilton-Wentworth over the three-year time period. It is also implausible to assume that the increase in reports is due to an increase in the actual number of sexual assaults taking place in Hamilton-Wentworth. It appears, then, that the increase stems from heightened reporting rates. In the rest of this first section, we consider whether the increase stems from more of the same people coming forward or from reporting by different types of complainants.

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[2] Time One includes data for one year only (1982), while Time Two sums reports for two years. The average number of reports per year in Time Two is 372 (or 744/2).

Table 20 Police Classification of Reported Sexual Assaults by Most Serious Possible Charge by Time Period

Time One	Number of Cases in Population	Percentage	Number of Cases in Sample	Percentage
Rape/attempted rape	48	18.2	48	23.8
Indecent assault (female)	193	73.1	138	68.3
Indecent assault (male)	23	8.7	16	7.9
TOTAL	264	100.0	202	100.0
Time Two				
Level III	10	1.3	10	4.1
Level II	46	6.2	42	17.1
Level I	688	92.5	193	78.8
TOTAL	744	100.1	245	100.0

Sources: Hamilton-Wentworth Regional Police database
Unweighted Police File

Making comparisons between the two time periods in terms of the sections of the Criminal Code used would not be fruitful as the definition of the offences and the population groups protected underwent considerable alteration. Rape, for example, required that the crown prove penetration of the vagina by the penis. Indecent assault on a female (and sexual assault) do not require this proof. As well, the post-amendment sexual assault offences are gender-neutral in that they can be committed by a person of either sex on a person of either sex. Previously, homosexual rapes could only be dealt with under section 156, indecent assault on a male, and female assailants could not be charged under rape or indecent assault on a male. Bill C-127 also extended protection to spouses. Finally, the amendments provided for three levels of sexual assault distinguished by the level of violence or associated, aggravating factors. No such distinction was made prior to 1983.

4.1.2 Changes in Characteristics of Complainants

While it is clear that more people are willing to report sexual assaults to the police since the amendments, have there been any changes in the type of person coming forward? A comparison of the profiles of Time One and Time Two complainants reveals an increase in the proportion of male complainants. Males increased from nine

to fifteen per cent of all complainants. This is not to say that there are fewer reports being made by females, but rather that the number of male complainants making a report has increased.

At the same time as this shift in the gender ratio, the average age of complainants has dropped from 20 to 16 years of age. As can be seen from Table 21, complainants under the age of six increased from four to 10 per cent of all complainants and complainants aged six to thirteen increased from 19 to 34 per cent. Neither of these shifts attained statistical significance.

As can also be seen from the exhibit, male complainants tend to be younger than female complainants. Male complainants, for example, are over twice as likely as female complainants to be under the age of 14 years. The proportions of both male and female complainants under the age of 14 increased significantly over time. Young females have increased from 19 to 37 per cent and males from 50 to 89 per cent. The numbers of male and female adult complainants (over the age of 18) dropped over the two periods. The proportion of adult female complainants dropped from 53 to 40 per cent. There were only two adult male complainants in 1982, and none in either 1984 or 1985.

There are several potential explanations for these observed changes. First, the public may be more aware of and willing to report suspected instances of child sexual abuse. Secondly, the 1983 amendments might have triggered increased reporting on behalf of child sexual abuse victims. Thirdly, the police might have altered their way of classifying child sexual abuse reports, shifting from incest (section 150), intercourse with a female under 14 (section 146.1), intercourse with a female between 14 and 16 (section 146.2), or intercourse with a foster a stepdaughter (section 153(1)(a)) to section 246.

Table 21 Gender and Age of Complainants by Time Period

	Time One		Time Two	
Gender	**Number**	**Percentage**	**Number**	**Percentage**
Female	180	90.5	204	85.0
Male	19	9.5	36	15.0
TOTAL	199	100.0	240	100.0
Missing cases	3		5	
	$x^2 = 2.47$			
	$p < .12$			
Age				
5 or less	7	3.7	23	10.4
6 to 13	36	19.3	75	33.8
14 to 18	52	27.8	47	21.2
19 to 30	68	36.4	64	28.8
Over 30	24	12.8	13	5.8
TOTAL	187	100.0	222	100.0
Missing cases	15		23	
Mean age	20.5 years		16.1 years	
	$x^2 = 59.44$			
	$p < .15$			

Age by Gender (Column Percentages)

	Time One			Time Two		
	Male	**Female**	**Total**	**Male**	**Female**	**Total**
13 or less	50.0	19.0	23.6	89.3	36.6	43.4
14 to 18	37.5	27.1	25.5	10.7	23.0	21.5
Over 18	13.5	53.0	49.5	--	40.3	35.1
Number of cases	16	168	182	28	191	219
	$x^2 = 11.06$			$x^2 = 41.36$		
	$p < .05$			$p < .001$		

Note: The chi square for gender by time period ($x^2 = 2.47$) was not significant ($p < .12$). Similarly, the chi square for age by time period ($x^2 = 59.44$) was not significant ($p < .15$).

Source: Unweighted Police File

It is unlikely that Bill C-127 is the predominant factor explaining these changes. It is much more likely that the changes are the result of greater public awareness of, and readiness to report, suspected child sexual abuse cases coupled with a shift in police and crown practices regarding the laying of charges.

The amendments cannot be the major causal factor explaining these changes for a number of reasons. First and foremost, the amendments were addressed to adult complainants (e.g., prior sexual history restrictions). Second, until January 1988, the ability of child complainants to testify was limited by the Canada Evidence Act or common law rules (e.g., the need for corroboration).[3] In addition, although the majority of both crown counsel and defence lawyers interviewed had noted an increase in complainants under the age of 16 years, they were usually unwilling to credit Bill C-127 with all or any of this increase. Our key informants considered that improved public awareness of child sexual abuse and a willingness to report suspected cases were the causal factors.

Part of the apparent increase might also be attributed to changes in classification procedures. One could expect such a shift on purely logical grounds, as section 246 does not require proof of intercourse and thus covers a wider spectrum of incidents (e.g., sexual touching) than do sections 150, 146 and 153. Unfortunately, it is impossible to empirically prove this shift as we did not review preamendment files for these latter Criminal Code sections. We found the absolute number of complaints made each year that involved a parent or sibling rose from four reports in 1982 to an annual average of 35 reports in 1984/85. However, this could be the result of greater public awareness of and readiness to report intra-family assaults rather than the result of altered labelling practices. According to the interview accompanying the police force response, section 246 is used for child sexual abuse cases in preference to older sections as it is less restrictive in terms of the type of sexual contact, burden of proof, etc. and offers greater sentencing latitude. From this perspective, changes in labelling practices contributed to the increase of child victims in our samples, however, we stress that the shift is most likely and primarily owing to changes in public attitudes towards child sexual abuse.

The drop in reports by adult females is surprising as one intended impact of the amendments was greater readiness on the part of sexual assault victims to come forward and report to the police. We cannot be certain whether the fall is due to fewer sexual assaults taking place or an increased reluctance to report such assaults by this group.

If we consider the relationship between the complainant and the assailant, we find a statistically significant shift over time. In Time One, the majority (almost two

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[3] In January 1988, Bill C-15 was proclaimed by Parliament. Among other changes, the Bill abrogated the corroboration requirements for sexual offences and allowed for the admissibility of videotaped testimony and for the testimony of children under 14 years of age, who do not understand the nature of an oath or solemn affirmation, but are able to communicate evidence upon promising to tell the truth.

thirds) of reported sexual assaults involved strangers. In Time Two, assaults by persons unknown to the complainant had fallen to 42 per cent of reports made to the police. This drop is partly a function of the higher incidence of child victims in our Time Two sample. Child sexual abuse reports are much less likely to involve a stranger than are complaints by adults (50 versus 82 per cent in Time One and 31 versus 62 per cent in Time Two).

Other factors are at play here because the absolute number of stranger assaults on a per annum basis has dropped. As can be seen from Table 22, the proportion of stranger assaults has dropped for both adults and children or youths below 18 years of age. It may be that greater public awareness of the dangers of putting oneself in risky situations explains this drop in the incidence of reported stranger assaults (i.e., fewer may be occurring in Hamilton-Wentworth). On the other hand, a widespread public perception that these type of cases are difficult to resolve (due to the difficulties in identifying the perpetrator) may also account for the depressed number of this type of report.

As can also be seen from Table 22, the proportion of reports of assaults by dates or boyfriends has remained stable over time, but the number of reports of assaults by spouses, common law partners and ex-spouses has increased from zero to three per cent. This reporting change is likely a result of the extension of protection from sexual assault to spouses (section 246.8) although one must likewise consider the possibility of changed labelling practices. The increase in reporting of spousal assaults is slight and the relatively few reports from this type of complainant helps explain why only a minority of lawyers interviewed (two of six crown counsel and one of six defence lawyers) had noticed such a change. The increase in spousal sexual assaults was attributed by these practitioners to the amendments as well as to changes in the political climate that encouraged greater reporting and follow-up of spousal assault cases by the criminal justice system.

Table 22 **Relationship Between Complainant and Alleged Offender By Time Period and Age of Complainant**

	Time One		Time Two	
	Number	Percentage	Number	Percentage
Stranger	126	64.6	94	42.2
Neighbour, acquaintance or friend 36	18.5	46	20.6	
Date or boyfriend	6	3.1	6	2.7
Spouse, ex-spouse or common law partner	0	--	6	2.7
Father	1	0.5	18	8.1
Step-parent	9	4.6	12	5.4
Other relative	5	2.6	18	8.1
Other nonrelative	12	6.2	23	10.3
TOTAL	195	100.1	223	100.1
Missing Cases	6		20	

$x^2 = 22.89$
$p < .001$

Crosstabulation Gender By Age
(Column Percentages)

	Time One			Time Two		
	Adult	Child/Youth	Total	Adult	Child/Youth	Total
Stranger	82.2	49.5	65.6	61.8	31.4	42.3
Known or related	17.8	50.5	34.4	38.2	68.6	57.7
Number of cases	90	93	183	76	137	213
	$x^2=42.56$			$x^2=28.72$		
	$p<.001$			$p<.001$		

Source: Unweighted Police File

The exhibit also demonstrates the increased use of section 246 for incest incidents (father and other relative). These increased from three to sixteen per cent of reported incidents. The majority of crown counsel, defence lawyers and Sexual Assault Centre workers with pre- and post-amendment experience had noticed an increase in cases of child sexual abuse or calls from incest survivors. They attributed the increase to improved public awareness of the signs of child sexual abuse, and greater willingness to report such cases, even if they had happened some time earlier. Our informants thus attribute the observed increase in intra-family assaults, and child sexual abuse reports in general, to those attitudinal changes rather than to changes in police labelling practices, although we cannot entirely dismiss the latter as an explanatory factor.

Criminal justice system practitioners were asked to agree or disagree with the statement: "As a result of the amendments the criminal justice system is more willing to pursue "dubious" cases that probably would not have been prosecuted in the past". Half of the crown counsel and defence lawyers interviewed, as well as the police force response, agreed. Examples given were cases involving sexual touching, teenage sexual relationships, incest survivors and prostitutes.

4.1.3 Changes in Characteristics of Alleged Assailants

Table 23 compares the characteristics of alleged assailants for the two time periods. The people accused of sexual assault are overwhelmingly (99 per cent) male and there is no significant shift in the gender ratio over time. The numbers of missing cases are very high for the rest of the exhibit, thus caution must be exercised in interpreting the findings.

Table 23 Characteristics of Alleged Offenders by Time Period

	Time One		Time Two	
Gender	**Number**	**Percentage**	**Number**	**Percentage**
Male	196	99.5	228	98.7
Female	1	0.5	3	1.3
TOTAL	197	100.0	231	100.0
Missing cases	5		14	

$x^2 = 0.12$
$p < .75$

Table 23 (Cont'd)

	Time One		Time Two	
	Number	Percentage	Number	Percentage
Age				
18 or less	24	25.5	27	18.4
Over 18	70	74.5	120	81.6
TOTAL	94	100.0	147	100.0
Missing cases	108		98	
Mean age	30 years		34 years	
	$x^2 = 1.36$			
	$p < .24$			
Marital Status				
Single, never married	36	51.4	49	40.5
Married or common law	28	40.0	57	47.1
Separated, widowed or divorced	6	8.6	15	12.4
TOTAL	70	100.0	121	100.0
Missing cases	132		124	
	$x^2 = 2.28$			
	$p < .35$			
Prior Criminal Record				
No prior record	66	63.5	101	58.0
Record of sexual offence(s)	5	4.8	5	2.9
Record for other offence(s)	33	31.7	68	39.1
Totals	104	100.0	174	100.0
Missing cases	98		71	
	$x^2 = 6.54$			
	$p < .09$			

Source: Unweighted Police File

The average age of the assailant increased significantly over time from 30 years to 34 years. There are a high number of missing cases for perpetrators who were not identifiable or apprehended and one cannot assume that the age distribution for nonidentifiable suspects matches that displayed here. For those suspects for which age data are available, the proportion aged 18 or less dropped marginally from 25 to 18 per cent.

With an older age distribution, we found that the data for marital status show fewer single, never-married assailants and more married or once married offenders. There was a mildly significant shift in the proportion of alleged offenders with prior criminal records. In Time One, 36 per cent of alleged offenders had a prior record compared with 42 per cent of alleged offenders in Time Two ($p < .09$).

4.1.4 Changes in the Types of Incidents Reported

The vast majority of reported incidents involved a single victim and a single assailant. There are no significant shifts over time in the mean number of victims or assailants, or in the proportion of reports involving single or multiple victims or assailants (see Table 24).

There are, however, significant differences in the physical setting of the assaults. In Time One, one third of the complainants had been out walking and one quarter were at home. Just less than one quarter were in the offender's home or car. In Time Two, one fifth of the complainants were assaulted outdoors, while one third were at home and one quarter were either in the offender's home or car.

These findings are consistent with our earlier findings with respect to the characteristics of complainants and their relationship to the assailant. Over time, a higher proportion of the complainants are children or youths and they are much less likely to be assaulted by strangers than are adults. Secondly, stranger assaults are relatively less frequent. One could logically expect that child sexual abuse incidents, especially if intra-family, are likely to take place in the home of the complainant and/or assailant. Assaults by strangers are more likely to take place outdoors or in the offender's car. Thus, we should expect these shifts in the physical location of the assaults reported to be a result of the changes in the characteristics of complainants.

Table 24 Characteristics of Sexual Assaults Reported by Time Period

	Time One		Time Two	
Number of Assailants	**Number**	**Percentage**	**Number**	**Percentage**
One	175	88.4	210	89.4
Multiple	23	11.6	25	10.6
TOTAL	198	100.0	235	100.0
Missing cases	3		10	
Mean number	1.2 assailants		1.1 assailants	
	$x^2 = 6.00$			
	$p < .45$			
Number of Complainants				
One	184	91.1	214	88.1
Multiple	18	8.9	29	11.9
TOTAL	202	100.0	243	100.0
Missing cases	--		2	
Mean number	1.2 complainants		1.2 complainants	
	$x^2 = 9.34$			
	$p < .09$			
Location of the Assault				
Complainant's home	41	20.9	56	25.5
Offender's home	29	14.8	38	17.3
Common residence	8	4.1	25	11.4
Outdoors	71	36.2	47	21.4
Offender's car	16	8.2	16	7.3
Other	31	15.8	38	17.3
TOTAL	196	100.0	220	100.2
Missing cases	6		25	
	$x^2 = 27.79$			
	$p < .001$			

Source: Unweighted Police File

Table 25 displays the incidence of different types of sexual contact. Noticeable is the increased percentage of reports involving an invitation to sexually fondle the assailant, up from 16 to 31 per cent. This increase will reflect the increased propensity to report suspected child sexual abuse cases.

Table 25 Type of Sexual Contact in Reported Incidents by Time Period

	Time One		Time Two	
Incidence of Different Types of Sexual Contact	Number	Percentage	Number	Percentage
Invitations to fondling	32	15.8	75	30.6
Tableionism	7	3.5	6	2.5
Touching/grabbing	99	49.0	101	41.2
Masturbation of offender	4	2.0	7	2.9
Digital/object penetration	10	5.0	21	8.6
Oral intercourse	30	14.9	38	15.5
Genital intercourse	44	21.8	59	24.1
Attempted intercourse	11	5.5	14	5.7
Anal intercourse	4	2.0	8	3.3
Other sexual contact	12	5.9	16	6.5
Base	202		245	
Category of Sexual Contact				
Sexual touching	127	63.8	139	57.9
Penetration	72	36.2	101	42.1
TOTAL	199	100.0	240	100.0
Missing cases	3		5	

$x^2 = 1.43$
$p < .24$

Source: Unweighted Police File

Over time, there has been little shift in the percentages of reports citing other types of sexual contact. Reports involving penetration have increased from 36 per cent of Time One reports to 41 per cent of Time Two reports ($p<.05$).[4]

In order to disentangle the effects of changes in the population of complainants, we controlled for the age and gender of the complainant. As can be seen from Table 26, we found a statistically significant increase (from 37 to 46 per cent) in the proportion of female complainants citing penetration ($p<.05$). The increase is even more marked if we consider only adult female complainants. The proportion of reports from adults (over 18) that indicated vaginal intercourse or penetration by an object or finger rose from 36 to 60 per cent between the two time periods ($p<.01$). No statistically significant shifts in categories of sexual contact were noted for male complainants or complainants aged 18 or younger.

The amendments were expected to shift the emphasis from the sexual to the assaultive aspects of the offence. Have they been successful in this respect? According to our key informants, little if any change in the direction predicted has been noticed in Hamilton-Wentworth. The six crown counsel interviewed had noticed little if any shift in emphasis. One felt unable to answer. Two felt that there had been no change -- one of these commented that no change should be expected, and that only the definition had changed, the offence had remained the same. One felt that the emphasis on the sexual nature of the offence had marginally increased with the publicity over the new legislation. Two had perceived a mild shift in the direction expected by the authors of the legislation (i.e., towards the assaultive aspects at the expense of the sexual aspects), however, only one felt that the amendments had any role in this shift. Moreover, this respondent believed that many factors in addition to the amendments had contributed to the shift.

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[4] Penetration here is defined as anal or vaginal intercourse or penetration by an object or finger.

Table 26 Crosstabulations of Category of Sexual Contact With Complainant Characteristics

(Column Percentages)

	Time One			Time Two		
	Male	Female	Total	Male	Female	Total
Gender of Complainant						
Sexual touching	73.7	62.8	63.8	77.8	54.4	57.9
Penetration	26.3	37.2	36.2	22.2	45.6	42.1
Number of cases	19	180	199	36	204	240
Missing cases			3			5
		$x^2 = 0.48$			$x^2 = 5.93$	
		$p < .49$			$p < .02$	
Age of Complainant						
Sexual touching	65.6	59.8	62.7	64.1	40.3	55.9
Penetration	34.4	40.2	37.3	35.9	59.7	44.1
Number of cases	93	92	185	145	77	222
Missing cases			17			23
		$x^2 = 3.45$			$x^2 = 14.41$	
		$p < .49$			$p < .007$	

Source: Unweighted Police File

Although defence lawyers interviewed had diverse views, the majority (four of six) agreed that the amendments had been unsuccessful in shifting the focus from the sexual to the assaultive aspects. One disagreed and one neither agreed nor disagreed.

Thus, of the 12 lawyers interviewed (defence and crown counsel were the only group asked about this topic), only two believed that the amendments have had some measure of success in shifting the focus from the sexual plane to the assaultive aspects of the offence. Thus to the extent that such a shift is a logical or plausible outcome of Bill C-127, the amendments do not appear to have been successful in accomplishing this shift. One could argue, as two of the lawyers did, that such a shift should not be expected or at least not expected in any pronounced fashion.

The police respondent argued that, as a result of Bill C-127, the crime is now more often perceived as a crime of violence than was previously the case. However, although this response was the official "force" response, we cannot speculate as to the extent to which detectives would echo this attitude.

Some observers have suggested that the absence of a definition of "sexual" in the legislation covering sexual assault may prevent the achievement of the goal of shifting the emphasis to the assaultive.[5] Ruebsaat argues that the courts have tended to define sexual in fairly restrictive terms -- for example, requiring genital contact or the desire for sexual gratification.[6] These interpretations can limit the range of situations in which protection is offered and maintain the focus on establishing the sexual nature of the assault. The crown counsel we interviewed were divided in their interpretations of the definition of "sexual" under the new legislation. Three saw no change in the definition, and without a specific new definition, one must rely on earlier precedents. One cited Alderton ("an assault with the intention of having sexual intercourse").[7] One defined it as involving genital contact, but noted that the context of the incident would also be taken into account, and thus actions not involving genital contact could also be considered.

The last aspect to be treated in this section concerns the level of accompanying violence. In reviewing these findings, it is important to bear in mind that threats or the use of physical force may not have been necessary to obtain the submission of the complainant to the sexual activity. Many of the complainants were very young and could be taken advantage of by a person in a position of trust or authority without recourse to physical force or fear of its application. Young, impressionable or mentally handicapped people can also be cajoled or persuaded to participate in activities they would rather avoid if the aggressor is older, larger and able to convince them that the activity is normal. Victims can also be so frightened or traumatized by the potential threat posed by the aggressor that they submit for fear of the consequences. In other instances, the victim may have initially participated in some form of consensual sexual activity, but was made to feel that his or her decision to terminate the activity was unjustified.[8] Thus, the

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[5] Boyle, *Sexual Assault.*

[6] Ruebsaat, *The New Sexual Assault Offences: Emerging Legal Issues*, pp. 3-15.

[7] Ruebsaat, *The New Sexual Assault Offences: Emerging Legal Issues*, p.10.

[8] L.L. Holmstrom and A.W. Burgess, for example, (in *The Victim of Rape: Institutional Reactions*, John Wiley & Sons, 1978) argue that there are three types of victims -- only one of which involves women who clearly did not consent to the sex and were forced by the assailant against their will. The second group ("accessory to sex") involves cases in which the victim contributed to the incident in a secondary way. These were usually children or adults who lacked the cognitive or personality development to be able to consent or not consent. The assailant stood in a position of power or authority over the victim, who was persuaded to

following statistics may not give a true picture of the forces operating on the victim at the time.

There are no significant variations over time in the incidence of reports involving a weapon or the threat or use of physical force. As we have had to assume that, if these were not mentioned, they were not used, the figures displayed in Table 27 may underestimate the true incidences of these aggravating factors. Weapons were involved in six to ten per cent of the reported cases, threats of injury in 12 per cent, and physical force applied in 16 to 19 per cent. Physical or psychological damage to the complainant is mentioned in a minority of the reports but the decrease in the proportion of reports citing physical injury (from nine to six per cent) is not statistically significant. Sexual assaults were accompanied by other offences (e.g., robbery, etc.) in two per cent of the reports from both time periods.

The Sexual Assault Centre files also contain information on the nature and level of accompanying violence for victims in contact with the Centre. High levels of accompanying violence or intimidation were noted in both time periods. About half of callers had been threatened with physical harm and almost one in four had been made to fear for her life. Weapons were used in a small minority (five per cent) of reported incidents. Ten per cent of callers in Time One and 13 per cent in Time Two had been assaulted by more than one assailant. These proportions have not altered over time.

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participate with bribes, the victim's need for social contact or by being convinced that the sexual activity was appropriate and enjoyable. The third category ("sex-stress") involved cases in which the male and female initially agreed to have sexual relations, but then something went wrong. Parents or authority figures intruded and defined it as rape, or the male became violent, failed to pay, demanded perverse sexual acts or robbed the victim.

Table 27 Incidence of Accompanying Violence by Time Period

	Time One		Time Two		
	Number	Percentage	Number	Percentage	Significance
Weapon	13	6.4	24	9.8	$x^2 = 1.23$ $p < 0.27$
Threats of harm	24	11.9	30	12.2	$x^2 = 0.00$ $p < 1.00$
Use of physical force	33	16.3	47	19.2	$x^2 = 0.43$ $p < 0.51$
Physical injury to victim	18	8.9	14	5.7	$x^2 = 1.26$ $p < 0.26$
Psychological injury to victim	-	--	2	0.8	$x^2 = 0.33$ $p < 0.57$
Accompanying offences	5	2.5	6	2.4	$x^2 = 0.56$ $p < 0.65$
Base	202		245		

Source: Unweighted Police File

A substantial number of Sexual Assault Centre records commented on physical injury to the complainant. The proportions were 71 per cent in Time One and 47 per cent in Time Two. Although the drop is statistically significant, these figures should not be taken as an indication of the proportions of assaults involving bodily harm to the complainant when this is defined as physical injury of more than trifling or transient nature. The incidence of Centre call reports citing bodily harm was relatively stable at 19 per cent of Time One calls and 16 per cent of Time Two calls.

The high incidence of reports involving threats of harm or death, group rape, or bodily harm suggests that one could also expect a high incidence of psychological damage to the victim. The Centre files mention psychological trauma for the majority of victims (60 to 67 per cent). Other effects include alienation from the family (18 to 22 per cent), a change of residence (10 to 11 per cent), and unwanted pregnancy (two to five per cent). There were no significant changes over time in the incidences of these latter impacts.

Table 28 Incidence of Accompanying Violence and Impacts of the Assault on the Victim

	Time One		Time Two	
	Number	Percentage	Number	Percentage
Incidence of Accompanying Violence				
Wounding or maiming	2	2.0	4	4.0
Bodily harm	19	19.0	16	16.2
Threat of bodily harm	50	50.0	45	45.5
Fear of death	22	22.0	24	24.2
Use of a weapon	4	4.0	7	7.1
Threats to a third person	9	9.0	6	6.1
Incidence of Impacts on Victims				
Physical injury	71	71.0	46	46.5
Psychological injury	60	60.0	66	66.7
Family alienation	22	22.0	18	18.2
Residence changed	10	10.0	11	11.1
Unwanted pregnancy	5	5.0	2	2.0
Loss of income	-	--	5	5.1
Base	100		99	

Note: These incidences may underestimate the true occurrence as some reports may be missing information about the form of the assault or its impacts on the victim.

Source: Sexual Assault Centre database.

4.2 Changes in the Processing of Reports by the Police

In this section we consider any changes in the sequence of agency involvement in sexual assault reports, changes in the founding and charging rate for reported assaults, and changes in the factors that are significantly associated with the processing of reports by the police.

4.2.1 Changes in Agency Involvement

Given the increased number of young complainants over time, significant differences were found in the person who first made the report to the police, the agency of first contact, and the proportion of complainants contacting various agencies. In Time One, three quarters of the reports to the police were made by the victim. In Time Two, this dropped to 59 per cent.

During Time One, 91 per cent of reports were made first to the police. In Time Two, this declined to 73 per cent. Reports made first to Children's Aid Societies rose from three per cent of Time One cases to 15 per cent of Time Two cases. Similarly, 13 per cent of Time One cases reported to the police included contact with Children's Aid Societies, while in Time Two this increased significantly to 35 per cent of cases.

These shifts appear to be directly related to the relatively higher incidence of child sexual abuse cases in the Time Two sample. We also asked key informants whether they believed these changes may be related to changes in protocols. None of the key informants believed this to be the case.

4.2.2 Changes in Founding and Charging Rates

We can now turn to the issue of changes in police decisions to consider the report as unfounded, founded, or founded but not cleared by charge. It should be noted that, in the opinion of at least one student of jurisprudence, the amendments should not be expected to have much inevitable impact on the pretrial stage as the amendments did not address the issue of the exercise of police discretion to label complaints as founded or unfounded. As Boyle argues, "all that can be hoped for is that there will be a kind of trickle-down effect of some beneficial impact of the new approach to sexual assault."[9] While no changes in the founding rate may have been precipitated by the amendments, one could logically expect some alteration in the charging rate to the extent that convictions are easier or the trial process is seen as less intimidating to victims.

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[9] Boyle, *Sexual Assault*, pp. 128-130.

Table 29 Sequence of Agency Involvement by Time Period

	Time One		Time Two		
	N	%	N	%	Significance
Person Who Made Report to Police					
Victim	148	75.1	144	59.3	$X^2 = 21.87$ $p < .001$
Relative	43	21.8	61	25.1	
Other	6	3.0	38	15.6	
TOTAL	197	100.0	243	100.0	
Missing cases	5		2		
Agency of First Contact					
Police	183	90.6	173	73.0	$x^2 = 27.41$ $p < .001$
Children's Aid	7	3.5	35	14.8	$x^2 = 36.33$ $p < .001$
Medical facility	4	2.0	17	7.2	$x^2 = 9.18$ $p < 0.10$
Sexual Assault Centre	4	2.0	1	0.4	$x^2 = 1.06$ $p < 0.35$
Other	4	2.0	12	5.1	
TOTAL	202	100.1	238	100.5	
Missing cases	-		8		
Proportion of Complainants Contacting Each Agency					
Children's Aid	26	12.9	85	35.3	
Medical facility	42	20.9	65	27.0	
Sexual Assault Centre	6	3.0	11	4.6	
Base	201		241		
Missing cases	1		4		

Source: Unweighted Police File

If we consider the tripartite classification of reports as unfounded, cleared by charge, and founded but not cleared by charge, we find shifts between the two time periods although some of the shifts are only marginally significant. The proportion of reports considered as unfounded remained approximately the same over time (21 to 22 per cent). The proportion cleared by charge increased over time from 21 to 30 per cent of all reports or from 26 to 38 per cent of all founded reports. This shift is

statistically significant ($p<.05$) and is in the direction that could be expected on the basis of the amendments. The most marked shift is the drop in the proportion of reports considered as founded but which could not be cleared by charge (from 58 to 48 per cent of all reports or from 74 to 62 per cent of founded reports). This is also consistent with the intent of the 1983 legislative changes.

Table 30 Outcomes of Reports Made to the Police by Time Period

	Time One		Time Two	
All Reports	**Number**	**Percentage**	**Number**	**Percentage**
Unfounded	42	20.8	53	21.9
Cleared by charge	42	20.8	72	29.8
Founded but no charge (otherwise)	118	58.4	117	48.4
TOTAL	202	100.0	242	100.1
Missing cases	-		3	
Founded Reports				
Cleared by charge	42	26.3	72	38.1
No charge (cleared otherwise)	118	73.8	117	61.9
TOTAL	160	100.0	189	100.0

$x^2 = 5.61$
$p < .06$

Source: Unweighted Police File

These observed changes in the founding and charging rates vary according to the gender and age of the complainant. Table 31 displays the charging rate for males and females for the two periods.

Using the 1984/85 police report data, we found no statistically significant relationship between reporting outcomes and the gender of the complainant. Female complainants were as apt to be believed as male complainants, and were as likely to see charges laid as a result of their report. In contrast, in 1982, male complainants were much more likely than females to see their reports cleared by charge (37 versus 19 per cent of all reports) although they were no more likely to be believed. The

Time One difference in the charging rate by gender might have stemmed from the lack of an explicit corroboration rule for offences under section 156.[10]

Table 31 Crosstabulations of Reporting Outcomes by Time Period and Gender of the Complainant

(Column Percentages)

	Time One			Time Two		
	Males	Females	Total	Males	Females	Total
Unfounded	21.1	21.1	21.1	25.0	21.3	21.8
Cleared by charge	36.8	18.9	20.6	30.6	29.2	29.4
Cleared otherwise	42.1	60.0	58.3	44.4	49.5	48.7
Number of cases	19	180	199	36	202	238
Missing cases			3			7
		$x^2 = 3.63$			$x^2 = 0.37$	
		$p < .17$			$p < .84$	

Source: Unweighted Police File

Note: The crosstabulation of outcomes by time period for females is significant at better than the .05 level, as is the charging rate (as a proportion of founded reports) by time for females. The crosstabulations for outcomes by time period for male complainants are not significant at or near conventional levels.

If we compared the outcomes for the Two Time periods, while controlling for gender, we find that female complainants now have a better chance of seeing their reports cleared by charge (up from 19 to 29 per cent of all reports). Reports by females are less likely to be considered as founded but not cleared by charge (i.e., cleared otherwise). The proportion of reports by females classified as cleared otherwise fell from 60 to 49 per cent. There has been no significant shift in the proportion of reports by male or female complainants that are considered as unfounded.

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[10] According to Boyle, *Sexual Assault*, p.156, there was no specific corroboration rule for indecent assault on a male in the legislation, and it is doubtful if one existed in common law practice, unless of course, the victim was a child.

There are no statistically significant shifts over time in the outcomes from reporting for male complainants. The drop in the charging rate from 37 to 31 per cent of all reports is not statistically significant. We must point out that there are few Time One male complainants and that statistical significance is easier to obtain as the sample size increases.

Reporting outcomes appear to be gender-neutral in the post-amendment period and one could plausibly argue that the legislation is a causal factor as corroboration requirements are the same for males and females. Changes in the attitudes of criminal justice practitioners towards complainants of a different sex may also be a factor as well as a greater readiness among female complainants to pursue their cases to court. We note, however, that the implications of the gender-neutral character of reporting outcomes must be treated with caution as we did not examine whether the same factors that influence the view that a female complainant is credible are operative when the complainant is male.

Founding and charging rates also vary significantly with the age of the complainant and show significant shifts over time (see Table 32). For example, if we look at reports involving complainants under the age of 14, we find a substantially increased likelihood of the report being considered as unfounded in Time Two (22 per cent) relative to Time One (nine per cent). At the same time, the charging rate has dropped from 35 to 26 per cent of all reports. This latter shift is much less marked than the former, and in fact if we calculate the charging rate as a percentage of all founded reports, we find only a marginal drop from 38 to 33 per cent. This is not statistically significant. The overall pattern then is one of reports by children being less likely to be founded but little change in the ability to clear by charge. This is understandable as the amendments had little impact on the ease of obtaining a conviction in child sexual abuse cases. Section 16(1) of the Canada Evidence Act dealing with children's evidence, for example, was not altered until January 1988.[11]

This shift in the founding rate for child sexual abuse complainants may be a result of the recent media attention to child sexual abuse such that parents, caregivers and professionals are much more willing to report their suspicions of child sexual abuse. In the past they were more cautious and tended to act only when the evidence was incontrovertible. Thus, it is plausible that as a result of increased reporting of a broader range of cases involving sexual abuse, fewer of the reports investigated by the police are classified as founded.

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[11] As noted previously, Bill C-15 was proclaimed by Parliament in January 1988, however, prior to Bill C-15, witnesses under the age of 14 were not presumed capable of giving sworn testimony and their capacity to understand the moral obligation to speak the truth was tested. If the evidence was unsworn, material corroboration was required for a conviction. Even when the evidence was sworn, case law since the passage of section 246.4 suggests that cautionary instructions have still been made by judges (see: Ruebsaat, *The New Sexual Offences: Emerging Legal Issues*, pp. 45-53).

Reports by, or on behalf of, 14 to 18 year old complainants also show a significant change in outcomes over time. Comparing Time One and Time Two outcomes, we find that reports by youths are much more likely to be cleared by charge subsequent to the amendments (up from 19 per cent of all reports to 36 per cent) and much less likely to be considered as founded but not cleared by charge (down from 56 per cent to 36 per cent). Over time, reports are slightly less likely to be considered as founded, but this drop is not statistically significant.

Table 32 Crosstabulations of Reporting Outcomes by Time Period and Age of the Complainant

	Time One		Time Two	
Under 14	**Number**	**Percentage**	**Number**	**Percentage**
Unfounded	4	9.3	21	21.9
Cleared by charge	15	34.9	25	26.0
Cleared otherwise	24	55.8	50	52.1
TOTAL	43	100.0	96	100.0
14 to 18				
Unfounded	13	25.0	13	27.7
Cleared by charge	10	19.2	17	36.2
Cleared otherwise	29	55.8	17	36.2
TOTAL	52	100.0	47	100.1
Over 18				
Unfounded	21	22.8	14	18.4
Cleared by charge	13	14.1	22	28.9
Cleared otherwise	58	63.0	40	52.6
TOTAL	92	99.9	76	99.9
		$x^2 = 12.27$ $p < .14$		$x^2 = 16.00$ $p < .04$

Source: Unweighted Police File

There is a mildly significant shift over time in the founding rate for reports by complainants over the age of 18. The percentage of all reports cleared by charge has risen from 14 to 29 per cent, or from 18 to 35 per cent of all founded reports by adults ($p = .08$). The proportion of reports considered as founded but not cleared by charge has also dropped from 63 to 53 per cent, but the fall is above conventional levels of significance ($p<.15$).

Before reviewing the factors affecting the processing of reports by the police, we can present the reporting outcomes according to the initial police classifications of the reports (See Table 33).

Table 33 **Crosstabulation of Reporting Outcomes by Initial Police Classification and Time Period**

(Row Percentages)

Time One	Unfounded	Cleared by Charge	Otherwise	Number
Rape/attempted rape	54.2	14.6	31.3	48
Indecent assault (female)	9.4	20.3	70.3	138
Indecent assault (male)	18.8	43.8	37.5	16
All cases	20.8	20.8	58.4	202
		$x^2 = 49.88$		
		$p < .001$		
Time Two				
Level III	40.0	30.0	30.0	10
Level II	11.9	42.9	45.2	42
Level I	23.2	26.8	50.0	190
All cases	21.9	29.8	48.3	242
Missing cases				3
		$x^2 = 10.88$		
		$p < .09$		

Source: Unweighted Police File

In 1982, reports of rape were more likely to be considered as unfounded than reports of indecent assault ($p<.001$). Just over half of the rape reports were considered as unfounded and only 15 per cent were cleared by charge. Reports of indecent assault on a male were twice as likely to considered as unfounded as were reports of indecent assault on a female (nine versus nineteen per cent) but they were twice as likely to be cleared by charge (44 versus 20 per cent, $p<.001$). Seventy-one per cent of indecent assault reports with a female complainant were believed, but were not cleared by charge, which suggests a high number of stranger assaults, victims unwilling to pursue complaints or police officers reluctant to lay charges due to the lack of corroborating evidence. Differences in the charging rate for rape and indecent assault on a female may stem from differences in the availability of evidence, the ability of complainants to identify their assailants or the willingness of complainants to pursue their cases to court. However, the relatively low founding rate for reports classified as rape is difficult to explain.

In Time Two there were mildly significant differences in the founding rate as a result of various aggravating factors or the level of violence associated with the assault ($p<.09$). The charging rate is highest for Level II, founded reports (43 per cent) and lowest for Level I reports (27 per cent). This difference may stem from the availability of corroborating evidence (e.g., bodily harm to the complainant) and the greater willingness of victims of more violent assaults to pursue these cases through court.

4.2.3 Factors Influencing Reporting Outcomes

In Chapter Three, we had reported the factors significantly associated with founding and charging in 1984/85. These factors included the characteristics or conduct of the complainant, the relationship between complainant and assailant, characteristics of the offender and availability of corroborating evidence (see Tables 3.14 and 3.15). To conclude this section on police outcomes, we examine the significant factors in each time period to determine if the same elements are influential and if there has been any change over time in their relative importance.

In 1984/85, we found that if the complainant had a prior criminal record or if the complainant had been accused of being promiscuous or partly responsible for the assault, then the police were more likely to consider the report as unfounded.

Table 34 presents a crosstabulation of outcomes by whether the police suggested the victim was lying. There are a number of differences evident over time. First, the police were less likely to suggest the victim was lying in Time Two than in Time One. The police made suggestions that the victim was lying in 12 per cent of Time Two cases compared with 21 per cent of Time One cases.

Table 34 **Crosstabulation of Outcomes by Whether Police Suggested Victim Was Lying**

(Column Percentages)

	Time One			Time Two		
	Victim Lying	No Suggestion	Total	Victim Lying	No Suggestion	Total
Unfounded	72.5	8.2	21.9	59.3	17.8	22.9
Cleared by charge	5.0	26.5	21.9	7.4	29.6	26.9
Cleared otherwise	22.5	65.3	56.1	33.3	52.6	50.2
Number of cases	40	147	187	27	196	223
Missing cases			15			22
			$x^2 = 76.27$			$x^2 = 23.87$
			$p < .001$			$p < .001$

Source: Unweighted Police File

Second, during Time One, almost three quarters (72 per cent) of the cases where the police suggested the victim was lying were classified as unfounded. During Time Two, this declined to 59 per cent. Even though there was a marked increase in the proportion of these cases that were classified as founded, there was virtually no change in the clearance rates (five per cent in Time One and seven per cent in Time Two).

Third, almost three quarters (71 per cent) of the unfounded cases in Time One contained a suggestion by the police that the victim was lying. During Time Two, less than one third (31 per cent) of the unfounded cases included such a suggestion. These changes may reflect a greater awareness of, or sensitivity regarding, the psychological and emotional trauma that the investigation process can cause victims of sexual assault. It is equally plausible, however, that this type of information was not documented by the investigating officer as often during 1984/85 as in 1982.

Table 35 presents a crosstabulation of outcomes by whether the police suggested the victim was promiscuous or of bad moral character. During both time periods, between one fifth and one quarter of the unfounded reports contained suggestions that the victim was promiscuous or of bad moral character.

Table 35 Crosstabulation of Outcomes by Whether Police Suggested Victim was of Bad Moral Character

(Column Percentages)

	Time One			Time Two		
	Victim of Bad Moral Character	Not Suggested	Total	Victim of Bad Moral Character	Not Suggested	Total
Unfounded	43.5	18.6	21.0	45.5	20.1	22.6
Cleared by charge	17.4	22.1	21.0	27.3	28.1	28.1
Cleared otherwise	39.1	62.2	58.0	27.3	51.8	49.3
Number of cases	23	172	195	22	199	221
Missing cases			2			24
		$x^2 = 8.01$			$x^2 = 8.04$	
		$p < .02$			$p < .02$	

Source: Unweighted Police File

During both time periods, almost one half (44 to 45 per cent) of the reports containing suggestions that the victim was of bad moral character were classified as unfounded. Complainants accused of being of bad moral character were relatively more prone to have their reports cleared by charge in Time Two than in Time One (27 and 17 per cent respectively); however, the difference was not statistically significant.

Table 36 presents a crosstabulation of outcomes by whether the victim was intoxicated at the time of the assault. The report was twice as likely to be considered as unfounded during Time One than Time Two if the victim was intoxicated. More than twice as many reports in Time One as in Time Two (67 versus 32 per cent) were considered as unfounded where the victim was intoxicated at the time of the assault.

Table 36 **Crosstabulation of Outcomes by Whether the Victim Was Intoxicated at the Time of the Incident**

(Column Percentages)

	Time One			Time Two		
	Victim Intoxi-cated	Not Intoxi-cated	Total	Victim Intoxi-cated	Not Intoxi-cated	Total
Unfounded	66.7	13.7	20.8	32.4	20.2	21.9
Cleared by charge	22.2	20.6	20.8	23.5	30.8	29.8
Cleared otherwise	11.1	65.7	58.4	44.1	49.0	48.3
Number of cases	27	175	202	34	208	242
Missing cases			-			3
			$x^2 = 43.51$			$x^2 = 2.63$
			$p < .001$			$p < .27$

Source: Unweighted Police File

The second generic factor associated with the founding rate in 1984/85 was the relationship between the complainant and the alleged assailant (see Table 37). If we distinguish between strangers and known assailants, we find that the founding rate for stranger assaults has increased marginally over time, whereas the founding rate for reports involving assailants known to the complainant has dropped marginally over time (from 83 to 77 per cent) ($p<.08$). This is likely an indication of the increased numbers of child sexual abuse cases. These primarily involve a known assailant and over time the founding rate for this type of report has fallen. There have been no significant changes over time in the clearance rates depending on the relationship between the complainant and alleged assailant.

Whether or not the alleged offender had a prior criminal record is significantly associated with the founding decision and clearance rates in both time periods, although it has become marginally less important over time (see Table 38). As can be seen, offenders with a prior record are almost three times more likely to be charged in both time periods than offenders without a prior record.

Table 37 Crosstabulation of Outcomes and Relationship Between Offender and Complainant

(Column Percentages)

	Time One			Time Two		
	Stranger	Known	Total	Stranger	Known	Total
Unfounded	21.4	16.9	19.8	16.0	23.4	20.3
Cleared by charge	18.3	26.8	21.3	28.7	31.4	30.3
Cleared otherwise	60.3	56.3	58.9	55.3	45.3	49.4
Number of cases	126	71	197	94	137	231
Missing cases			5			14
			$x^2 = 2.13$			$x^2 = 2.78$
			$p < .34$			$p < .25$

Source: Unweighted Police File

Table 38 Crosstabulation of Outcomes by Whether or Not the Offender had a Prior Record

(Column Percentages)

	Time One			Time Two		
	Prior Record	No Record	Total	Prior Record	No Record	Total
Unfounded	7.9	19.7	15.4	9.7	22.0	16.9
Cleared by charge	63.2	22.7	37.5	63.9	22.0	39.5
Cleared otherwise	28.9	57.6	47.1	26.4	56.0	43.6
Number of cases	38	66	104	72	100	172
Missing cases			98			73
			$x^2 = 23.34$			$x^2 = 31.29$
			$p < .001$			$p < .001$

Source: Unweighted Police File

We found a relationship between the availability of corroborating material evidence (i.e., objects, clothing) and the founding decision in both time periods (see Table 39). Cases where there is corroborating material evidence are twice as likely to be cleared by charge than cases without corroborating material evidence. In contrast, the existence of either corroborating forensic evidence or witnesses was not significantly associated with founding or clearance rates during either time period (see Table 40 and 41). However, we did find that the proportion of cases with corroborating forensic evidence or witnesses that were classified as unfounded declined marginally over time.

Table 39 **Crosstabulation of Outcomes by Existence of Corroborating Material Evidence**

(Column Percentages)

	Time One			Time Two		
	Material Evidence	None	Total	Material Evidence	None	Total
Unfounded	27.8	19.3	20.8	17.5	23.2	21.9
Cleared by charge	33.3	18.1	20.8	49.1	23.8	29.8
Cleared otherwise	38.9	62.7	58.4	33.3	53.0	48.3
Number of cases	36	166	202	57	185	242
Missing cases			-			3
			$x^2 = 14.13$			$x^2 = 15.02$
			$p < .007$			$p < .005$

Source: Unweighted Police File

Table 40 Crosstabulation of Outcomes by Existence of Corroborating Forensic Evidence

(Column Percentages)

	Time One			Time Two		
	Forensic Evidence	None	Total	Forensic Evidence	None	Total
Unfounded	31.6	19.7	20.8	25.0	21.6	21.9
Cleared by charge	42.1	18.6	20.8	29.2	29.8	29.8
Cleared otherwise	26.3	61.7	58.4	45.8	48.6	48.3
Number of cases	19	183	202	24	218	242
Missing cases			-			3
			$x^2 = 6.48$			$x^2 = 13.00$
			$p < .59$			$p < .22$

Source: Unweighted Police File

Table 41 Crosstabulation of Outcomes by Existence of Corroborating Witnesses

(Column Percentages)

	Time One			Time Two		
	Witness	None	Total	Witness	None	Total
Unfounded	18.6	21.4	20.8	9.8	25.1	21.9
Cleared by charge	37.2	16.4	20.8	51.0	24.1	29.8
Cleared otherwise	44.2	62.3	58.4	39.2	50.8	48.3
Number of cases	43	159	202	51	191	242
Missing cases			-			3
			$x^2 = 0.23$			$x^2 = 1.60$
			$p < .89$			$p < .45$

Source: Unweighted Police File

Table 42 shows that the nature of sexual contact was significantly associated with the founding decision in both time periods. During Time One, sexual touching cases were more likely to be founded, while in Time Two, cases more likely to be founded

involved penetration. For example, during Time One, 10 per cent of sexual touching cases were considered as unfounded compared to 40 per cent of penetration reports ($p < .001$). The majority of these Time One penetration cases were likely classified as rape, which had a relatively low founding rate. Over time, a higher proportion of sexual touching reports are being considered as unfounded (25 per cent during Time Two), while more penetration reports are considered as founded and cleared by charge. These latter changes are both statistically significant ($p < .01$ and $p < .001$, respectively).

We found, as expected, that if the offender admits guilt, the report is much more likely to be cleared by charge in both time periods. The charging rate in 1984/85 slightly exceeded the Time One rate (82 versus 69 per cent) and this increase is marginally significant ($p = .08$). This shift might be the result of a greater willingness of victims to pursue cases to court. In both time periods, a minority of reports for which the assailant admitted guilt were not cleared by charge (31 per cent in 1982 and 18 per cent in 1984/85), presumably because the victim was unwilling to pursue the case to trial.

Table 42 **Crosstabulation of Outcomes by Type of Sexual Contact**

(Column Percentage)

	Time One			Time Two		
	Sexual Touching	Pene-tration	Total	Sexual Touching	Pene-tration	Total
Unfounded	10.0	40.3	20.8	25.4	17.0	21.9
Cleared by charge	19.2	23.6	20.8	22.5	40.0	29.8
Cleared otherwise	70.8	36.1	58.4	52.1	43.0	48.3
Number of cases	130	72	202	142	100	242
Missing cases			-			3
			$x^2 = 30.39$			$x^2 = 8.89$
			$p < .001$			$p < .01$

Source: Unweighted Police File

Table 43 **Crosstabulation of Outcomes by Whether or Not Offender Admitted Guilt to Police**

(Column Percentages)

	Time One			Time Two		
	Admitted Guilt	No Admission	Total	Admitted Guilt	No Admission	Total
Unfounded	--	22.6	19.3	--	25.1	20.7
Cleared by charge	69.0	12.5	20.8	82.1	20.8	31.5
Cleared otherwise	31.0	64.9	59.9	17.9	54.1	47.7
Number of cases	29	168	197	39	183	222
Missing cases			5			23
			$x^2 = 49.18$			$x^2 = 56.90$
			$p < .001$			$p < .001$

Source: Unweighted Police File

If we return to the impacts of corroboration on the charging rate, we see interesting changes over time (see Table 44). For example, in 1982 reports corroborated by either material or forensic evidence or witnesses were twice as likely to be cleared by charge as uncorroborated reports. In Time Two, this relationship was marginally stronger.

The clearance rate for corroborated reports increased over time from 31 per cent in Time One to 45 per cent in Time Two. The increase in the charging rate for both corroborated and uncorroborated reports is statistically significant ($p < .005$ and $p < .05$ respectively). This improvement in clearance rates for corroborated reports may be the result of the police being more willing to press charges, or complainants being more willing to pursue their cases to court, subsequent to the amendments. The fact that uncorroborated reports cleared by charge have risen over time is probably related to the abrogation of the corroboration requirements included as part of the 1983 amendments.

Table 44 **Crosstabulation of Outcomes by Existence of Corroborating Material or Forensic Evidence or Witnesses**

(Column Percentages)

	Time One			Time Two		
	Corrobor-ated	None	Total	Corrobor-ated	None	Total
Unfounded	20.6	20.9	20.8	16.1	25.5	21.9
Cleared by charge	30.9	15.7	20.8	45.2	20.1	29.7
Cleared otherwise	48.5	63.4	58.4	38.7	54.4	48.3
Number of cases	68	134	202	93	149	242
Missing cases			-			3
			$x^2 = 6.74$			$x^2 = 17.25$
			$p < .03$			$p < .001$

Source: Unweighted Police File

A small minority of 1982 reports were made to the police at least 24 hours after the assault. Any delay, however, had no statistically significant bearing on the charging rate in Time One although the charging rate was slightly higher for delayed reports (see Table 45). In 1984/85 a higher proportion of reports were made after 24 hours, and the charging rate was marginally elevated for delayed reports ($p = .10$). Thus there has been no shift in the relationship between these two variables over time. Delays of at least 24 hours do not appear to damage the credibility of the complainant or the ability of the police to press charges.

In Time One and Time Two, clearing by charge was more frequent with reports involving known assailants than with stranger assaults. This relationship is self-evident in that the police have greater difficulty in apprehending nonidentifiable assailants. As might be expected, there was no significant change over time in the ability to charge strangers. There was also no significant change over time in the willingness or ability of the police to charge known assailants -- although the charging rate as a proportion of founded reports increased from 22 to 30 per cent for unknown assailants and 32 to 39 per cent for known assailants.

Table 45 Crosstabulation of Outcomes by Delay in Reporting to Police

(Column Percentages)

	Time One			Time Two		
	24 hours or greater Delay	No Delay	Total	24 hours or greater Delay	No Delay	Total
Unfounded	18.2	21.2	20.9	22.4	22.2	22.2
Cleared by charge	27.3	20.6	21.4	31.0	27.8	28.7
Cleared otherwise	54.5	58.2	57.8	46.6	50.0	49.1
Number of cases	22	165	187	58	158	216
Missing cases			15			29
			$x^2 = 0.57$			$x^2 = 0.25$
			$p < .77$			$p < .88$

Source: Unweighted Police File

4.3 Changes in Court Outcomes

In this final section, we consider the impacts of the legislative amendments on the extent of plea bargaining, conviction rates for sexual offences and the lengths of jail sentences handed out to convicted offenders.

4.3.1 Changes in Plea Bargaining

The amendments created three levels of sexual assault in order to recognize the variety of aggravating factors associated with an assault. Some legal observers speculated that one could expect an increased incidence of plea bargaining as a result.[12] The majority of crown counsel interviewed believed that there had been no change in the proportion of sexual assault cases plea bargained under the new law. (One was uncertain.)

In contrast, four of the six defence lawyers interviewed believed that plea bargaining was marginally more prevalent under the new legislation. (One had not noticed any change and one was uncertain.) Not all attributed this increase to the new

[12] See Boyle, *Sexual Assault*, p.131.

legislation. One noted a general increase in plea bargaining. Three considered the increase as related to the legislation -- the amendments offer greater flexibility for plea bargaining and put the crown attorney in a stronger position.

The six crown counsel believe that plea bargaining is as frequent for sexual assault as for other equally serious crimes against the person. Half of the defence lawyers believe it to be slightly less frequent in sexual assault cases, as the crown is perceived to be reluctant to negotiate these types of cases.

Has the creation of three separate levels of sexual assault provided sufficient flexibility for negotiating cases? Half of the crown prosecutors and defence lawyers interviewed agreed. One crown counsel was noncommittal and the remainder disagreed. Crown counsel were of the opinion that this flexibility tended to be used if the case was weak or if a Level II charge was possible but a guilty plea for a Level I charge was acceptable.

4.3.2 Attrition of Cases Between the Police and Crown

According to the police force response, the police generally prefer to lay the maximum charge the facts can conceivably sustain, unless it is in the complainant's interest to go for a lesser charge. Not all charges laid by the police are pursued by the crown. Charges may be stayed (postponed) or withdrawn. The crown attorney may also alter the charges by adding or subtracting concomitant charges, or by altering the level of the sexual assault charge.

Our information on the attrition of charges between the police and the crown is suspect as some of the discrepancies between the police and crown charges may be the result of missing or inaccurate data rather than true alterations in the charges. The reader should keep this caveat in mind when considering the following findings. Alterations in charges proceeded with by crown counsel may or may not be the result of plea bargaining.

Table 46 Attrition of Charges Between Police and Crown (Number of Cases)

Initial Classification of Report by Police	Number of Reports	Number of charges Laid by Police	Number of Charges Pursued by Crown
Time One			
Rape/attempted rape	48	7	5
Indecent assault (female)	138	28	21
Indecent assault (male)	16	7	4
TOTAL	202	42	30
Time Two			
Level III - aggravated	10	3	2
Level II - weapon, bodily harm, party to	42	18	16
Level I	193	51	39
TOTAL	245	72	57

Source: Unweighted Police File

Our review of the police file data revealed that of the seven rape or attempted rape charges laid by the police, only five were pursued by the crown, and these were without any concomitant charges laid by the police (see Table 46). One case of one count of rape plus one count of indecent assault (female) was altered to four counts of nonsexual offences. One other rape charge was not proceeded with by the crown.

In the sample of files reviewed, we found that police laid 28 charges of indecent assault on a female. Twenty-one were pursued by the crown, with some additions and deletions to the concomitant charges. Attrition was also noticeable in the seven charges laid by the police in 1982 of indecent assault on a male (in the sample of files we reviewed); four were pursued by the crown, one charge was dropped and two more were pursued but without the indecent assault counts.

In Time Two, the crown also tended to pursue the majority of the charges laid by the police, but the attrition was more marked for Level I sexual assaults. Two of the three Level III charges laid by the police were pursued by the Crown as originally charged by the police. Eighteen of the files we reviewed contained Level II charges laid by the police. Six had concomitant charges. Sixteen Level II charges (five with concomitant charges) were pursued by the crown. Two Level II charges were dropped (one was pursued as the Level I concomitant charge).

Of the 51 police files reviewed with Level I charges (as the worst charge), 39 were pursued by the crown. In six cases charges were reduced, and the remainder were withdrawn.

It is difficult to make direct comparisons between the two time periods, because the Criminal Code categories are not comparable and because of the problems with missing data. Using the figures just presented, however, we can observe that the crown pursued a greater proportion of charges laid by the police in Time Two than in Time One (92 and 71 per cent respectively).

4.3.3 Changes in Conviction Rates

In Table 47, we display the final court outcomes, based on the unweighted police file. A striking feature is the high proportion of guilty pleas in Time One. Three fifths of the suspects charged with rape pleaded guilty (one to lesser charges). Over two thirds of suspects charged with indecent assault (female) pleaded guilty as did all suspects charged with indecent assault (male).[13]

Table 47 Final Court Outcomes from Crown Charges by Time Period

Time One

Rape

5 rape charges pursued by the crown
2 suspects pleaded guilty to rape, one to another sexual offence
2 trial outcomes unknown

Indecent Assault (Female)

21 indecent assault cases pursued in our sample of the files reviewed
15 suspects pleaded guilty to indecent assault (one to Level I sexual assault and 7 to other concomitant charges as well)
2 suspects who pleaded not guilty were convicted of indecent assault
1 suspect pleaded not guilty and was acquitted
3 trial outcomes are unknown

Indecent Assault (Male)

4 cases of indecent assault on a male were pursued in the sample of files reviewed; all suspects pleaded guilty

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[13] We have assumed that all cases for which the verdict is unknown involved a not guilty plea. This approach may underestimate the actual incidence of guilty pleas.

Table 47 *(Cont'd)*

Time Two

Level III Sexual Assault

2 cases of Level III pursued
1 suspect pleaded guilty
1 found guilty after not guilty plea

Level II Sexual Assault

16 Level II charges pursued in our sample
5 suspects pleaded guilty to Level II
2 pleaded not guilty but were convicted of Level II
1 pleaded guilty to lesser offence
8 outcomes unknown

Level I Sexual Assault

39 cases of Level I simple sexual assault pursued in our sample of files reviewed
26 suspects pleaded guilty to Level I
7 pleaded not guilty but were convicted of Level I
3 acquitted of Level I sexual assault
3 outcomes unknown

Source: Unweighted Police File

In Time Two, the proportions are lower. A guilty plea was registered in one of the Level III cases, approximately one third of Level II cases and two thirds of the Level I cases. While the proportion of guilty pleas rises as one descends from Level III to Level I sexual assaults, we note that one half of the trial outcomes from Level II charges are still unknown, compared to about eight per cent of Level I charges. These missing cases could involve guilty pleas or plea bargaining and thus we cannot put undue stress on the differences in guilty plea rates.

Of the approximately three pleas of not guilty to indecent assault (female) charges, two resulted in a conviction and one in an acquittal. The one not guilty plea to a Level III charge resulted in a conviction for Level III aggravated sexual assault. The two not guilty pleas to Level II sexual assault charges resulted in convictions as charged. Of the approximately 10 not guilty pleas entered against Level I charges, seven (or 70 per cent) resulted in conviction and three (or 30 per cent) in acquittals.

Table 48 Conviction Rates by Initial Police Classification and Time Period

Time One	Reports Pursued by the Crown	Estimated Conviction Rate	Estimated Number of Convictions
Rape/attempted rape	5	60.0	3
Indecent assault (female)	21	81.0	17
Indecent assault (male)	4	100.0	4
TOTAL	30	80.0	24
Time Two			
Level III	2	100.0	2
Level II	16	50.0	8
Level I	39	84.6	33
TOTAL	57	75.4	43

Note: The conviction rate is calculated as all convictions for reports pursued by the crown.

Source: Unweighted Police File

If we were to calculate a conviction rate expressed as a percentage of the reports pursued by the crown, we would find little change between the two time periods. The overall conviction rate for Time One reports of rape and indecent assault was estimated at 80 per cent which is marginally higher than the overall Time Two rate of 75 per cent.

Crown prosecutors interviewed were asked if the proportion of cases in which a conviction was obtained had altered over time. Two noted a mild increase, three believed there had been no change and one was uncertain. Four believed that the crown's chances of winning sexual assault cases had been enhanced by the new law and two felt there had been no change. Defence lawyers generally agreed with this assessment. Four considered that it was now more difficult to defend people charged with sexual assault as a result of the new law. Two felt there was no change.

Thus while legal practitioners tend to believe that the 1983 amendments have enhanced the crown's chances of successfully prosecuting sexual assault cases, few have noted an enhanced rate of conviction. The lack of outward signs of the enhanced potential for convictions may stem from the changes noted in the types of cases coming forward -- e.g., the abuse cases in which corroboration may still be an issue. The

perceptions of the legal practitioners interviewed as to any changes in the conviction rate are consistent with the results of our estimation of conviction rates for the two time periods. Little was observed between the two periods.

When asked the reasons for this improved position of the crown, half of the crown counsel interviewed referred to the abrogation of recent complaint rules, three pointed to the inadmissibility of prior sexual history, and two cited the relaxation of the need for corroboration for a conviction.

Defence lawyers also pointed to the new rules concerning corroboration and evidence as to past sexual history, and the lack of need to prove sexual intercourse. One said that it was easier to obtain a conviction if one no longer had to prove sexual gratification was the motive. Another argued that judges were biased -- the legislation had little effect in reducing their ability to defend people charged with sexual assault.

What factors did the crown and defence lawyers see as critical to obtaining a conviction or an acquittal? All crown counsel interviewed believe that despite the abrogation of the rules regarding recent complaint, the behaviour of the complainant immediately after the assault can be introduced and can influence perceptions of the complainant's credibility. While the majority of crown counsel (four of the six with pre- and post-amendment experience) felt that abrogating these rules was one of the most significant differences between prosecuting cases under the old rape laws and the new laws of sexual assault, this kind of evidence can still be introduced. As one counsel noted, it helps if the complaint is made "within 15 minutes". Half of the defence lawyers interviewed also see lack of recent complaint as damaging to the crown's case. One noted that three ways of introducing this evidence remain available.

The timing of the disclosure of the assault was raised as an issue in three of the trials we observed (Trial's three, four and six). In one trial (number three), the complaint was, according to defence counsel, allegedly fabricated after a guidance teacher had suggested to the complainant that, in cases of sexual abuse, the Children's Aid Society removed the victim from the home. This delay did not prevent the judge from finding the complainant credible. In two other trials (numbers four and six), the complainants did not contact the police promptly because they did not immediately realize the seriousness of the incidents.

All crown counsel also believe that corroboration is still an important factor influencing outcomes, especially in cases where it is the defendant's word against the complainant's. Thus they believe that the use of physical force, a weapon, resistance by the victim and injuries to the victim are important aids to the prosecution. The presence of these types of evidence corroborate the assault, demonstrate the lack of consent and determine the level of the charge. Two prosecutors consider that not requiring strict corroboration is a major change occasioned by the amendments. Three defence lawyers agreed that lack of corroboration could be very damaging to the crown's

case. (Two were more neutral, and one considered lack of corroboration to be not all that damaging, although he noted that its presence was the ideal.)

In two of the trials that we observed (numbers four and six), there was no material corroboration for the complainant (or the accused). The triers of fact had to choose between the two accounts based on the perceived credibility of each. Both trials resulted in the accused being acquitted. It may be that the courts were unwilling to convict without corroborative evidence. It may also have been that the judge and jury in these cases entertained doubts about the guilt of the accused because of the delays in reporting in both cases and because of the inconsistencies in the complainant's testimony (trial number six) or the perception that the complainant's behaviour after the assault (or in court) was "inappropriate" for a sexual assault victim (trial number four).

Although our observations suggest a reluctance to convict without corroborative evidence; with so few cases observed one cannot be categorical about the manner in which section 246.4 has been interpreted by the courts. These two trials, however, also raise the issue of continued stereotypes of "typical" victim behaviour (i.e., she must be upset, but precise about details of timing) and responses (i.e., she must report promptly), or appropriate behaviour for women (i.e., apartment doors should be kept locked).

Four of the crown counsel also believe the prior sexual history and character of the complainant to be a potentially important factor in determining the outcome of a trial. They noted that this type of evidence can rarely be introduced, but it is very damaging when introduced. The restrictions on the admissibility of this type of evidence are seen as a major change by half of the crown counsels interviewed. The general moral character and background of the complainant as perceived by the judge or jury is also influential according to five of the crown counsel. Convictions are more difficult to obtain if the complainant invited the assailant to her home or engaged in behaviour that could be judged, by some segments of society, to be as loose or promiscuous.

Our court observations found that prior sexual activity or general reputation is not being raised in court. In one trial (number three), these details were disclosed during the testimony in chief by the complainant, presumably because such a demonstration of candour was not expected to prejudice the judge against the complainant, but rather was expected to demonstrate the honesty of the complaint.

Proof of penetration is no longer required under the new laws. Three crown prosecutors believe this type of proof still to be an important factor in their case as it helps corroborate the complaint. Three disagreed. One believed that dropping the need for proof of penetration was a major change introduced by the amendments.

The 1983 amendments do not, however, provide a definition of "sexual" and concern has been expressed by other observers about the way in which the courts

determine this and the breadth of definition used.[14] There has been some concern that, in the absence of a definition, sexual would be narrowly interpreted as requiring penetration or genital contact. Although the trials that we observed can by no means be considered as indicative of case law, we can note some of the definitions used in Hamilton-Wentworth during 1987.

In one trial (number two), the complainant charged that the accused had penetrated her, but there was no trace of semen found by the Adult Sexual Assault Examination. Tenderness of the genital area was noted. The judge advised the jury that "mere touching" could be considered as sexual assault, and the jury found the accused guilty of sexual assault.

In a second trial (number four), the complainant charged that she woke up when the accused attempted genital intercourse with her. There was no attempt to conduct an Adult Sexual Assault Examination as there was no violence and no ejaculation. The judge gave the jury the Criminal Code definition of sexual assault (i.e., nonconsensual sexual activity). The jury found the accused not guilty as they did not believe that any "sexual activity" had taken place.

In a third trial (number six), the definition of "sexual" was even broader as the alleged activity did not involve penetration (or attempted penetration). The complainant charged that the accused touched her breast and vagina with his hands. The judge considered the complainant to be less credible than the accused and found the accused not guilty.

In all three of these trials, genital contact (at least touching of the genitals) was involved in the definition of sexual assault. In the other three trials observed, genital intercourse was involved.

Four of the six crown counsels interviewed also consider that the age difference between the complainant and accused to be important, if the complainant is a child and the accused an adult. Four believe as well that the existence of a prior relationship between the complainant and accused is very influential. Half of the defence lawyers agreed. Lack of consent is harder to prove if a prior relationship existed. The absence of a prior relationship strengthens the crown's case. Three prosecutors consider that a prior record for the complainant can damage their case if this is used to discredit the witness' credibility.

Other than changes with respect to recent complaint and sexual history, the majority of crown counsel did not believe that the emphasis on the other factors had altered as a result of Bill C-127. The police sergeant responsible for preparing the force response, in a follow-up interview, also echoed the perception that the perceived moral

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[14] For examples, see Ruebsaat, *The New Sexual Assault Offences: Emerging Legal Issues*, and Boyle, *Sexual Assault.*

character of the complainant influences outcomes at trial. In his opinion, juries tend to apply stereotypes and strict moral standards in their interpretation of the complainant's behaviour, and this influences their perceptions as to his or her credibility. Our court observations also suggested this tendency on the part of both judges and juries.

Isolating the influential factors from the data we collected from the police files is problematic as the majority of cases that went to court involved a guilty plea. If we look at the factors associated with charging rates (which presumably partly reflect police perceptions of convictability) we find that charges are laid more frequently in cases for which corroborating evidence was available, the complainant had no prior record, and the complainant's story was consistent and plausible. Delays in reporting (of over 24 hours), or the perception that the complainant was promiscuous, did not adversely affect charging rates.

4.3.4 Changes in Sentencing

We have limited data on sentencing. A substantial minority of the police files lack information on the final sentence (when a conviction had been obtained). As a result, these findings as to sentencing should be considered as suggestive and descriptive rather than confirmatory of differences over time. The figures for the number of convictions are based on the weighted police file database.

In Time One, the two rape convictions resulted in jail terms of seven years each. Of the 17 convictions for indecent assault on a female, 16 files show sentences. The average sentence was 12.8 months. Four received a suspended sentence. We also have sentencing data for three cases of indecent assault on a male. The average jail sentence was 26.0 months.

In Time Two, the two Level III convictions resulted in jail sentences averaging 4.5 years. The eight Level II convictions resulted in an average jail sentence of 11.4 months. One offender was given a suspended sentence. Of the approximately 33 Level I convictions, the average jail sentence was 8.8 months. Twenty-five of the 33 convictions resulted in a suspended sentence.

If we were to multiply these averages by the estimated number of such cases in each time period, we would find a 20-month average jail sentence for Time One sexual offences versus a 10-month average in Time Two. We cannot simply assume that this finding demonstrates that sentence lengths have fallen as a result of the amendments. The amendments changed the definition of the offence and sentencing maxima, and offered protection to a wider population. Secondly, we have previously noted changes in the reporting population, labelling and type of offences reported. In particular, we noted a fall in the proportion of complainants who were physically injured during the assault. Thirdly, the sentencing data were sometimes absent and we cannot be sure that the missing sentences were similar in length to the sentences for which we have

information. Fourthly, we have few cases on which to base the analysis;, in particular there are very few rape and Level III sentences.

Table 49 displays the final trial outcomes and sentencing data from the crown briefs reviewed for 1981/82 and 1984/85 District Court trials. There is a wide range of sentences imposed for convictions and they vary with the charge and whether or not concomitant charges exist. Note the lengthy jail sentences for rape and the relatively high incidence of suspended sentences for indecent assault on a female. If we count a suspended sentence as equal to zero months and exclude acquittals, dismissals and discharges, we find that the average sentence length imposed for a Time One conviction was 19 months (across 33 convictions for rape or indecent assault). In Time Two, this average had increased slightly to 22 months (across 16 cases of sexual assault for which outcomes are known). As these briefs represent all the District Court level sexual assault, rape or indecent assault cases during those time periods, we can say that at the District Court level, which tends to hear the majority of more serious cases or those trials by indictment, average sentence lengths have increased slightly.

Crown counsel were divided on whether sentence lengths had altered as a result of the amendments. Two noted decreases, two noted mild increases and two were undecided or felt no change had occurred. As sentence lengths vary with the seriousness of the offence and character of the accused, most were reluctant to attribute any changes to the amendments. In light of the many factors that need to be considered in setting a jail sentence (level of violence, whether the accused might commit the same offence again, the age of the complainant, trauma suffered by the victim, etc.) most were unable to suggest average sentence lengths. Half made the attempt and the responses were:

- o fines, suspended sentences, 30 days or three to six months for 246 charges proceeded with by summary conviction;
- o nine to eighteen months if proceeded with by indictment;
- o 18 months to three years if Level II;
- o three to five years if Level III.

Table 49 Sentences for District Court Crown Trial Outcomes By Time Period

Time One

Rape/Attempted Rape

- 2 convictions for a single charge of rape received jail sentences of 12 months and 2 1/2 years
- 3 multiple charge cases received jail sentences of 4 years, 10 years, 8 months and 15 years (this latter sentence was for two counts of rape and 3 nonsexual charges)
- 1 count attempted rape plus 1 count indecent assault received 2 years less 1 day

Indecent Assault (Female)

- 29 cases (4 others had had charges withdrawn)
- 5 acquittals, 1 conditional discharge (put on 1 year probation) and 1 sentenced on a common assault charge (suspended sentence plus 2 years probation)
- 15 convictions for single count ranged from suspended sentences with probation (6 cases), a choice of a $500 fine or 30 days in jail (2 cases), or a jail sentence ranging from 2 months to 12 months (the average for these 7 cases was 6 months)
- 7 convictions for multiple offences all resulted in jail terms ranging from 6 months (plus 2 years probation) to 2 years less 1 day (plus 2 years probation). The average jail term was 18 months

Indecent Assault (male)

- 6 cases (2 had had charges withdrawn)
- 1 unknown outcome
- 2 cases with 1 count received 2 years probation and 3 months jail (with 3 years probation)
- 3 cases with multiple charges received 9 months jail, 9 months jail with 3 years probation and 8 months jail

Time Two

Level III

- 1 case with multiple charges with a guilty plea resulted in 2 years (6 months concurrent for four nonsexual charges)

Level II

- Two cases, but one result unknown. The other, which had a concomitant Level I charge, resulted in 2 years less 1 day plus 2 years probation

Table 49 (Cont'd)

Level I

- 17 cases (4 had had charges withdrawn or dismissed)
- 1 acquittal, 1 absolute discharge and 1 re-elected for trial on a different level
- 9 cases with single counts resulted in sentences ranging from 3 to 48 months. The average was 19 months.
- 5 cases with single counts resulted in sentences ranging from 90 days (plus 6 months probation) to 60 months. The average was 29 months. (If the 4 year sentence is excluded, the average would drop to 15 months.)

Source: District Court crown briefs.

These findings as to changes over time in sentencing patterns and average sentence lengths for sexual assault convictions are consistent with our findings from the review of District Court crown briefs.

The majority of defence lawyers interviewed (four of six) believed that sentence lengths had increased. Two believed that there had been no change. One observed that greater public pressure for stiffer sentences had resulted in longer jail sentences. None believed that the amendments were primarily responsible (two believed that the amendments had had some modest impact and two discounted any impact from the amendments).

5.0 TREATMENT OF THE VICTIM OF SEXUAL ASSAULT

In this chapter we consider how victims of sexual assault are handled by the various agencies. We begin by describing how the criminal justice system and the related agencies respond to sexual assault complainants and how this has altered over the past few years. We then present the key findings from our interviews with sexual assault victims. We consider what services were sought by victim-respondents and their attitudes towards their encounters with the Hamilton-Wentworth criminal justice system and related agencies. It is important to remember that one cannot infer from these case studies to the felt experience of all sexual assault victims. Finally, we look at whether practitioners believe that the felt experience of the victim has improved as a result of the amendments.

5.1 Institutional Response to Victims

5.1.1 Response by the Hospital

McMaster University Medical Centre is the regionally designated centre for the treatment of sexual assault victims. The sexual assault unit is staffed by emergency department personnel who have had training in the use of the Adult Sexual Assault Examination kit and in the protocol for contacting other agencies. According to the nurses we interviewed, nurses usually have no special training for dealing with sexual assault victims other than instruction in the use of the aforementioned kit.

According to the nurses on the emergency staff interviewed at this hospital, sexual assault victims who arrive there get immediate attention if physically injured. If medical treatment is not required, they are escorted to a "quiet" room where they can be interviewed by a nurse without the presence of other emergency visitors.

Victims are advised about the Adult Sexual Assault Examination and are given it if they wish. Our respondents believe that almost three quarters of the sexual assault victims (adults) they see now request it. This level has been increasing over time according to three of the five emergency core staff interviewed. Reasons given for this increase were greater willingness of victims to come forward and press charges, greater public awareness of the kit and the quality of evidence it can provide, and the designation of this hospital as the regional sexual assault medical centre in 1978. All victims who wish the kit to be used are given it regardless of whether they have decided to press charges or not. Reluctance to have the examination, according to our hospital interviews, usually stems from unwillingness to press charges because of fear of retaliation, distrust of the court system, or cynicism over final trial outcomes.

Some of the literature has suggested that the Adult Sexual Assault Examination further traumatize the victim as it can appear to be a repeat of the original assault. We questioned our respondents on this point. Two felt that the examination is always traumatic, dehumanizing and degrading for the victim. One disagreed completely and two believed that this was a possibility but rarely happened in their experience.

The emergency department automatically calls the Sexual Assault Centre when a victim arrives, or they are informed about an imminent arrival, if the victim is not already accompanied by a Centre worker. One respondent believed that this practice had changed over time -- formerly the Centre was called only if the victim requested it. This protocol change was not connected with the amendments. The aim where possible, is to have the Centre worker present when the victim arrives at the hospital. Other than this change, efforts have been made by the hospital to streamline the process of gathering forensic evidence, and to clarify the position of McMaster University Medical Centre as the regional treatment centre for sexual assault victims. These efforts predated the 1983 amendments.

Other than medical treatment or the collection of forensic evidence, the hospital does not offer follow-up services. Patients are referred to their family doctors. The head of the sexual assault squad at the hospital attributed this lack of follow-up care or counselling to budgetary restrictions.

5.1.2 Response by the Sexual Assault Centre

The Sexual Assault Centre in Hamilton is an autonomous, community-based organization, staffed by volunteers who have had specific training in how to assist victims of sexual assault, whether this is a recent incident or happened long ago. The counsellors handle much of their caseload over the telephone, but also offer support to victims at the hospital, provide accompaniment to the hospital, police, courts and in-home visits, and provide one-on-one counselling and group therapy sessions.

The Centre's policy is to maintain a neutral stance with respect to reporting to the police or pursuing a case through the courts. They believe that victims should not be pushed to do what they do not want to do, but should be allowed to decide for themselves based on a realistic appraisal of the advantages and disadvantages of various courses of action. They provide this information and support the victim whatever her decision with regards to reporting to the police. The Centre does not share any information regarding callers with any criminal justice agencies.

Workers reported that they describe the legislation on sexual assault and the rights of the victim to ask the police to lay charges (as well as withdraw them). They describe the types of questions the police will ask and the steps they may take. Some of the disadvantages mentioned are that the victim might be asked to take a polygraph

test,[1] that some of the questions may seem intrusive, that their privacy might be invaded, that some police officers are sympathetic and some are not. They also mention that some victims feel better for having reported to the police. They describe what types of support the Centre can provide and where they cannot help or can only be of limited assistance. Workers said that they describe the trial process from preliminary hearings to sentencing outcomes, what the crown prosecutor and defence may do or say in court, how long a trial can take, the benefits of going through with the case and the frustrations that might be encountered.

The Sexual Assault Centre workers were asked to estimate the proportion of callers who reported the assault to the police. The estimates ranged from 10 to 50 per cent. The average of these estimates was just over one quarter. Only one counsellor thought that the level of reporting to the police had increased over the past few years. The rest had not noticed any change. These estimated levels of reporting somewhat underestimate the proportion we obtained from about 123 callers in 1987 who were asked if they had or intended to report to the police. Among these callers, approximately 54 per cent had called the police and an additional 18 per cent were considering doing so.

During the interviews, Centre workers suggested a variety of factors that constrain reporting to the police. These include the fear of a negative attitude displayed by the police, fear of going to court, fear of retaliation by the assailant and fear of publicity (three of six workers for each reason). Other reasons included the lack of family support for police involvement, feelings of guilt, and doubt that the final outcome would be decided in their favour or to their satisfaction (each cited by two of six workers).

These reasons are generally consistent with the ones given to the Centre in 1987 by the 40 callers who had no intention of reporting the assault to the police. The three most important reasons given in this survey: wanting to forget the incident (35 per cent), fear that the family would learn (32 per cent), and fear of retaliation by the assailant (26 per cent).

Centre interviewees also noted that the name of the Centre had changed (from the Rape Crisis Centre) as a result of the legislative amendments. This nominal change helped alert the public that the Centre was available to provide support to a wide range of sexual assault victims. This nominal change might help account for the recent increase in calls from incest survivors.

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[1] The Hamilton-Wentworth Regional Police do not have a polygraph according to our informant. Only three of the almost 1000 files in our weighted police file database mentioned polygraphs. These tests would have been conducted in another jurisdiction. Crown counsel interviewed were almost unanimous in their beliefs that there had been no change in the use of lie detector tests over time, moreover that polygraph's were used as frequently in sexual assault cases as in other types of equally serious crimes against the person (i.e., rarely in any case).

5.1.3 Response by the Criminal Justice System

According to the response prepared by the Hamilton-Wentworth Regional Police, police officers have training that sensitizes them to the needs of victims and the problems faced by victims who participate in the criminal justice system. The force currently uses a training video on the topic of sexual assault victims. It deals with such issues as the embarrassment and guilt suffered by victims, why lack of resistance is common and understandable, the impact on the victim of questioning as to consent, etc. This is followed by discussions of the video.

Once the victim has reported to the police, the nature of the investigation process followed depends on the case in question and the wishes of the victim. An interview or interviews with the victim are required in order to learn the details of the complainant and to help determine whether a crime has been committed. The police are reluctant to have Sexual Assault Centre workers or other support people present at these interviews. Their position is that only people trained in collecting evidence and giving testimony should be present in case an appearance in court is required to substantiate the police report. Sexual Assault Centre workers are not trained to give evidence. The police also believe that the presence of the Centre worker can create "negative interaction" with the complainant. The police argue that they are willing to accommodate victim's needs for accompaniment, but are unwilling to automatically grant access to Centre workers. For their part, the Sexual Assault Centre workers wish to be present at these interviews when requested by the victim in order to offer support and to ensure that police officers treat the complainant in a sympathetic manner.

In order to determine the veracity of the Complainant's report, the police may sometimes pursue inconsistencies or weaknesses in the complainant's story and judge the reactions of the complainant to suggestions that she (or he) is fabricating the charge. The police might also test the ability of the victim to perform as a witness in court. Only one of the victims of sexual assault who completed a questionnaire regarding their experiences with the criminal justice process specifically mentioned any of these lines of questioning.[2] In general, nine of the eleven victims of sexual assault were satisfied with the manner and nature of questioning by the police. The only criticism expressed by seven of the respondents was that the interviews were conducted by male police officers while they would have felt much more comfortable with female officers.

According to the police, whether or not charges are laid is a decision taken by the police, sometimes in consultation with the complainant. As our review of police file data showed, reports that are believed to be founded are not always cleared by charge. In some cases the victim is reluctant to have charges pressed, preferring instead that the assailant be warned that the report has been filed with the police. The types of charges laid are determined by the police, sometimes in consultation with the crown or

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[2] In the following section we discuss the findings from this component of the research in greater depth.

complainant. While the police prefer to lay the most severe charge the evidence can conceivably sustain, they may go for a lesser charge if they believe this to be in the complainant's best interest.

The police force respondent noted that changes are instituted in policies, rules and procedures to meet legislative changes. The new legislation, for example, caused changes in the content of the training program for investigators. The new legislation is also frequently used for child sexual abuse cases as it is less restrictive and offers greater sentencing latitude. Other changes are instituted to respond to community needs or other pressures. For example, greater awareness and understanding of the needs and the problems faced by victims as a result of their involvement with the criminal justice system has led to sensitivity training for police. The police also noted that designation of the McMaster University Medical Centre as the regional Sexual Assault Management Unit, the introduction of the Adult Sexual Assault Examination kit and the development of the protocol for hospital visits had streamlined the investigation process and made the hospital visit easier for victims. The interagency child abuse protocols also helped co-ordinate institutional responses to child sexual abuse incidents. The police force had not set up a sexual assault squad, but some efforts were being made to match investigation teams to the type of offence. These developments were considered to be independent of the amendments.

The majority of crown counsel perceived no changes within their office in formal or informal policies, rules or procedures concerning the handling of sexual assault cases or victims as a result of the amendments. The two prosecutors who did note a change cited the institution of a victim/witness coordinator to help respond to victim needs for information and support. They also indicated that, unlike other cases, sexual assault cases are now assigned to specific crown counsel in order to prevent any trauma to the victim that could be caused by a change in the prosecutor. Two other crown counsel concurred that this assignment of cases that would have an impact on the handling of sexual assault cases and of complainants; however, unlike their colleagues, they did not see this move as resulting from the amendments. One other prosecutor noted greater sensitivity to the emotional needs of victims as a result of the women's movement and literature on this topic.

According to the crown counsel interviewed, less than 10 per cent of complainants withdraw their complaints after charges have been laid. The major reasons for withdrawal are because a falsehood or false charge has been discovered, because the complainant fears retaliation from the accused should she continue with the case, or the complainant fears publicity or the trial process. Nothing is done in most cases when the complainant withdraws, however, a public mischief charge may be considered when the complaint is discovered to have been fabricated.

Sexual Assault Centre workers generally concur that these reasons are important, although they do not consider fabrication to be a reason for withdrawal. From their perspective, the primary reasons for withdrawal are the lack of support from friends or

relatives, fear of reprisals and distrust of the judicial system. The court system can often be seen as intimidating especially if the victim feels she will not be believed or will be seen as responsible for the alleged assault.

According to the crown counsel interviewed, the complainant is interviewed by the crown counsel before the trial, unless the client fails to come forward. The length of time required for this interview varies with the case.

The crown has made a point of assigning specific crown counsel to each sexual assault case in order to reduce the trauma for victims and to help build a better rapport with them. Two of the counsel have had special training in dealing with sexual assault cases, although this does not always involve sensitivity training. Several would have liked more training, one noting that interviewing techniques, especially with children, would have been useful.

Finally, we note that crown counsel will request that the courtroom be cleared of spectators during a sexual assault trial while a complainant testifies if the complainant is very young or would be so upset that the testimony would be inhibited. While responses varied to this question, the general feeling appeared to be that simple embarrassment was insufficient grounds; the complainant would have to be very distressed to warrant granting such a request.

5.2 Attitudes of Sexual Assault Victims

In this section we consider three dimensions of the victim's experience: what medical or support services are used or desired by victims? what is the experience of victims with the criminal justice system? and what problems or gaps in service exist? The findings are based on detailed questionnaires completed by 12 sexual assault victims (in two cases these were completed by the parents of the victims -- one on behalf of a child, and one on behalf of an adult who had subsequently moved to another province).

Before presenting the results of the interviews with sexual assault victims, it would be worthwhile to summarize methodology used to collect this information and to indicate the anticipated impacts of this methodology on data quality and generalizability.

Two of the victims completed questionnaires mailed to them, under a covering letter from the District Court crown office. Each had been identified as having been the chief witness at a sexual assault trial in 1986 or 1987 at District Court. Three were asked to complete a questionnaire by workers at the Sexual Assault Centre. All of these had had their cases go to trial in the last year or so. Five victims and two parents of victims called a Hamilton-based hotline established for a three week period and publicized in the local mass media and social service agencies. These interviews were conducted over the telephone using a similar instrument.

There are several caveats worth noting. Two of the respondents were the mothers of sexual assault victims, therefore their responses may not accurately reflect the felt experience of their daughters. On the other hand, both appeared well informed (one instituted the charges on behalf of a handicapped daughter) and we have no reason to suspect that either would deliberately distort the experience of her daughter in the retelling. Nonetheless, their own experiences of the criminal justice system will influence their responses on behalf of their daughters.

Secondly, there are selection biases that make these interviews questionable as a cross-section of victims. The District Court tends to hear the more serious sexual assault cases. At least three of the five self-completion questionnaires involved a trial at District Court and a fourth was uncertain but had been identified through the district crown files. Only three of the seven hotline victims saw their cases go to trial -- two at Provincial and one at District Court. Thus, our responses with respect to trial experience favour the District Court and underrepresent the Provincial Court or sexual assault charges proceeded with summarily.

One might also expect self-selection biases. The victims who were asked by the Sexual Assault Centre to participate in the survey, or those who responded to the appeal by the district crown's office would be generally favourable in their attitudes towards these agencies. One might also expect the victims (or parents) who phoned the hotline to be more likely to have made this effort if they had been angered by some aspect of their treatment. While several did exhibit strong negative feelings, some were quite pleased with all aspects. These factors (and the few responses) preclude our ability to generalize to the wider population of post amendment victims with experience of the criminal justice system. Thus, these findings should not be considered as indicative of how "victims" feel, but as descriptive of how some victims experienced the criminal justice system.

5.2.1 Experience with Medical and Victim Support Services

Ten of our 12 respondents contacted the Sexual Assault Centre. All but two had multiple needs for information, counselling or accompaniment. Five wanted information about what they could expect at the police station or if the case went to trial. Five wanted advice on what to do next. Nine sought immediate or crisis counselling and six asked for longer-term counselling. Three wanted accompaniment (two to the hospital and two to court). Other services used included referrals (two), reading materials (two), and help in pursuing a victim of crime claim (one).

Third, victims provided ratings on the quality of the service they received from the Centre. The majority (six) were satisfied, two were dissatisfied, and one respondent was neutral. We note that three of the satisfied respondents had been asked to co-operate with this survey by the Sexual Assault Centre, thus the hotline attracted more of a mixture of negative and positive responses.

Five of the six satisfied victims were extremely satisfied with the services they received from the Centre, one despite the fact that she felt staff were over-worked. Another was extremely satisfied with the Centre as a source of initial support and advice, but was not comfortable with her longer-term therapy group and eventually dropped out. She was dissatisfied because the size of the group had declined and she felt this put too much pressure on her to talk. The sixth satisfied victim was only mildly satisfied with her treatment by the Centre. She did not feel that the Centre was well set up for crisis counselling, and wanted a full-time professional counsellor on staff to help her deal with the deeper psychological effects of the assault. As we have noted, the Centre is staffed with volunteers, not professional therapists.

One victim was neither satisfied nor dissatisfied with her reception by the Centre. She sought immediate advice and support but felt that the counsellor she spoke with was neither particularly supportive nor well informed.

Two respondents were dissatisfied -- one mildly so because the counsellor she spoke with seemed unsure of her information and somewhat cold. This victim had been assaulted in another province by a family member and sought advice as to what she could do, a legal referral and counselling. She also complained about the lack of follow-up contact, which she attributed at least partly to the fact that she lived outside of the immediate catchment area. She acknowledged that she was uncertain as to her own needs from the Centre (she has not yet contacted the police), and noted that she wanted "more definitive guidelines" from the counsellor. This uncertainty may have contributed to her dissatisfaction as the Centre prides itself on being neutral but supportive of whatever decision the victim reaches.

The other victim was moderately dissatisfied with the Centre. She had sought advice on what to do, information as to what she could expect from the police or in court and crisis counselling. She wanted better information on "what was available" and felt that her counsellor was not providing the kind of support that she needed.

Respondents were asked if there were services that they would have liked the Centre to offer, but that were not available. No one remarked on any gaps in service, although we have noted that three complained that their counsellors were not well informed and four complained of the quality of the crisis counselling they received (one calling for a full-time professional to be on the staff of the Centre). One complained of staff shortages although many of the complaints of lack of information or support might also stem from the same problem.

It is interesting to note that the nine victims who relied on the Centre for crisis counselling also reported that their friends, colleagues or other people with whom they consulted immediately after the assault, had been moderately to extremely supportive. In spite of these expressions of concern and caring by friends and colleagues, these women sought skilled counsellors to help with the emotional aftermath. From the

perspective of the victims, the Sexual Assault Centre appears to be playing, or is expected to play, an important role in providing emotional support, counselling and advice on what can be expected from various courses of action.

Eight victims also sought medical attention. One provided no information on her reasons for seeking medical help. Three sought emergency treatment for injuries suffered during the assault. One sought evidence of the assault but was uncertain if the Adult Sexual Assault Examination kit had been used. Five others consented to have the kit used. One noted that the hospital refused to use the kit unless she was willing to press charges. Another noted that she was never told about the kit (she went to Hamilton General). Three victims were seen by male doctors although they would have preferred female doctors. The five other victims were seen by female doctors -- one noted that her doctor was assisted by a male nurse whom she asked to leave as she felt uncomfortable. McMaster University Medical Centre is recognized as the treatment centre for sexual assault victims, and victims are examined by available emergency staff. The majority of the doctors working in emergency are male although nurses are predominantly female and they also assist in the examination and treatment of victims.

Two of our respondents complained of delays in being treated and three were dissatisfied with the attitudes of staff or of the attention received. Four others rated the quality of the medical care very positively (one did not complete this section of the questionnaire). Those who were dissatisfied complained of delays in being seen of three to four hours, the lack of anyone to provide emotional support to the victim (this was not at McMaster University Medical Centre), the lack of privacy (the victim was interviewed by medical staff while only a curtain separated her from the next patient -- again not at McMaster), and a negative attitude on the part of hospital staff (this concerned a 1982 rape in which a nurse made the victim feel "dirty" saying that she "deserved what had happened to her").

5.2.2 Experience with the Criminal Justice System

Eleven of the 12 assaults were reported to the police. The 12th victim has not yet reported the assault for fear of retaliation by her assailant (her brother).

All respondents were interviewed by male police officers although one had both male and female officers present. Seven would have preferred to have been interviewed by female police officers, and four had no preference. According to the Hamilton-Wentworth Regional Police, there is only one woman among the 60 to 70 detectives on the force. There is no sexual assault team of detectives who are suited by training and/or inclination to deal with sexual assault victims.

Only three of the victims agreed that some of the questions asked by the police probed into parts of her life that had nothing to do with the assault or the apprehension of her assailant. One was made uncomfortable by this, two were not. The rest considered the questioning to be relevant.

Despite the discomfort that can be caused by male police investigators questioning female victims about a sexual assault incident, seven of the eleven respondents were very positive about the police force. These victims felt strongly that the police officers with whom they came into contact were sensitive to their feelings, sympathetic and considerate. One victim was neutral about the police, finding the officers she dealt with neither particularly sympathetic nor unsympathetic, and one had mixed feelings -- praising one officer but finding a second one very unsympathetic. Two of the victims who were positive or at least neutral about their reception by the police were disenchanted with the manner in which their complaints were investigated. One had lost her case and did not feel that the police had done enough "digging" nor had they been realistic about her chances of winning. The other feared that the mistakes made during the investigation will permit the accused to overturn the guilty verdict in an appeal.

Two were extremely dissatisfied with their treatment by the police. One of these latter two had been beaten and sexually assaulted by her common law husband. She reported this to the police some 10 hours after the incident. The police considered the report as founded (arresting her assailant a day later) but she complained that they were too interested in her life style, which had nothing to do with the assault, moreover they were insensitive in their questioning -- asking her "did you like it?" The second was the parent of a mentally handicapped woman. A bus driver in charge of transporting a group of handicapped people masturbated in front of his passengers. The parent called the police but was extremely dissatisfied with their response as no charges were laid. The daughter was unable to give a statement to the police. The mother pressed charges through a Justice of the Peace.

Eight of these cases went to trial. A ninth was dismissed at the preliminary hearing, as the victim, a mentally handicapped woman, was unable to give sworn testimony.[3] One assault was not reported, and no arrests were made on the other two cases -- one because the assailant could not be identified and the other because "not

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[3] The parent related that the courtroom had been cleared except for an "interpreter" for her daughter. She was subsequently told that her daughter was asked if she understood what an oath meant. Her daughter has a mental age of seven or eight, and was unable to respond, even though her mother believes that she knew "she had to tell the truth".

enough evidence existed".[4] The length of time that it took reports to reach the court can be regarded as considerable. Two victims were unable to remember the dates but the five others indicated that trials began six to fifteen months after the assault. The remaining respondent said the trial was held two months after the assault but we suspect this was the preliminary hearing as she indicated that the "trial" ended sometime in 1987.

During this long wait for an available courtroom, our respondents sometimes felt neglected by the crown. Three were dissatisfied by the efforts made to keep them informed of how their cases were progressing. Three were satisfied although one was completely unable to indicate the initial charges laid, which charges were proceeded with, and what the final trial outcomes were. One victim was neither satisfied nor dissatisfied.

Seven respondents were mildly to extremely satisfied with the efforts the crown prosecutor made to prepare them for the courtroom experience (although one distinguished between the two crown counsel assigned to her case and noted the role of the Sexual Assault Centre in helping prepare her). Three who were moderately to extremely satisfied did not have to testify at a trial as the suspect pleaded guilty at the outset. One victim was extremely dissatisfied with the way she was prepared for trial -- the crown prosecutor had only met with her one-half an hour before the trial began.

Of the eight cases that went to trial, three ended in a guilty plea by the accused before the victim had to testify. Two pleaded guilty as charged and one pleaded guilty to a lesser (unknown) charge.

Five victims testified in court. Four of the five found the experience to be "extremely" upsetting (choosing five on a one to five scale where one was "not at all upsetting" and five was "extremely upsetting"). The fifth found the experience to be mildly to very upsetting. Particularly traumatic (for four of the five) was the implication that the victim was to blame for what had happened. Also cited were having to relate the details of a sexual assault in front of strangers, facing the accused in court and having to relive a traumatic experience. The four who were most upset by the experience all believed that the defence lawyer had gone out of his way to intimidate and humiliate them. These experiences combined with the findings from the court monitoring suggest that a favoured defence strategy is to assign guilt to the victim. The length of time the respondents related they had to testify (for the examination in chief and the cross-examination) ranged from 45 minutes to eight to ten hours.

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[4] This victim was a married woman, attacked by a colleague at her night school. Although she was injured by the assault (anal intercourse) and the police considered her report to be founded, no arrest was made. She indicated that she had not asked the police to terminate their investigations and that she was extremely satisfied with her treatment by the police.

In two cases there was mention made of the prior sexual conduct of the victim with persons other than the accused. In the first, the victim had been kissed and fondled by a friend of her brother and the defence lawyer queried whether she was sexually experienced). The crown prosecutor did not object to these questions.[5] In the second, the victim had been assaulted by a man she had met earlier that evening while in the company of mutual friends and was asked about her prior sexual relationship with men. The crown did not object to these questions. The victim finally did and the judge agreed that the questions were irrelevant. Questions relating to prior sexual activity and general reputation were not raised in the six trials we observed at District Court.

Two respondents to the survey of victims also indicated that the defence had argued that the victim had waited too long before coming forward. One had taken three hours in order to discuss with her family and a Sexual Assault Centre counsellor the pros and cons of reporting. Another had waited 10 hours before reporting an assault by her common law husband -- the delay appeared to be related to difficulties in finding someone to look after her children, lack of knowledge as to what could be done, and being upset because of this betrayal by someone she loved. This issue was also raised in three of the trials we observed at District Court.

Respondents to the survey of victims related that in six of the eight cases the accused was found guilty (having pleaded guilty before the trial in three instances). Four were found guilty as charged, one was found guilty of physical assault, and one pleaded guilty to a lesser (unspecified) charge. Two suspects were found innocent. One victim was extremely upset by this verdict and felt that she had been mislead as to the chances of a conviction by both police and crown counsel. She felt that the crown counsel had not worked as hard at obtaining a conviction as the defence had worked at obtaining an acquittal. She was confused about many things that had happened during trial but had not managed to talk with the crown prosecutor despite many calls to him. The other victim, while mildly satisfied with the way the crown prosecutor handled her case in court, felt that the crown should have done more investigating and should have spent longer with her clarifying the incident.

Two victims had decided never to report a sexual assault to the police again. One because she did not believe that convictions were possible and the other as a result of the anguish caused to her by the trial. She felt that she had been on trial and had had to justify every aspect of her lifestyle and conduct. The investigator hired by the defence had invaded her privacy. On top of this, the defence was appealing the (guilty) verdict and she feared that mistakes or omissions during the investigation would mean a successful appeal.

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[5] The case boiled down to her word against his. The defence claimed that the accused had not assaulted the complainant nor been present. He was found not guilty.

The others were likely to report a second assault to the police even though not all were positive about their experience with the Hamilton-Wentworth criminal justice system. The parent of the mentally handicapped victim, for example, felt that the police and judge who dismissed the charges had been extremely unfair in allowing the offender's rights to take precedence over those of the victim. She was pleased with the performance of crown counsel and was adamant that she would again report a sexual assault to the police.

The woman who had been assaulted by her common law husband also thought she had been treated unfairly by the criminal justice system, as she was dissatisfied with her treatment by the police, the Sexual Assault Centre and the hospital. She was satisfied with the handling of her case by crown counsel and felt it to be extremely likely that she would again report an assault to the police.

5.2.3 Problems or Gaps in Services Identified by Victims

Several potential problem areas in the way sexual assault victims are treated were identified by the respondents. First, there is support for the use of female doctors and police investigators in cases involving female victims. Secondly, more effort would seem to be warranted to keep victims informed of the progress of the case even if this means simply making periodic contact. Thirdly, the interview findings suggest that more time should be taken by crown prosecutors in preparing witnesses for testimony in chief and cross-examination, and in explaining courtroom procedures. These last two problem areas may reflect a lack of sufficient staff within the crown's office.

There was some indication that the Sexual Assault Centre may be insufficiently staffed for the demands made upon it by sexual assault victims. One victim complained of staff being spread too thin, three complained of counsellors being poorly informed, and four were unhappy with the quality of the counselling. Unfortunately we have no more information on the types of information required or how reasonable it is to expect this to be provided by the Sexual Assault Centre. It may also be unrealistic to expect professional counsellors on staff at a crisis centre, rather than having victims referred to professionals.

Other comments included the need for greater sensitivity and understanding of victims emotional needs on the part of crown attorneys (two respondents), someone to care for children during the investigation and trial period (one respondent), better advertising of sexual assault crisis services available (one respondent) and a spokesperson for mentally handicapped victims to ensure a sympathetic yet serious response to their needs (one respondent).

5.3 Perceptions of The Impact of Bill C-127 on the Victim's Experience with the Criminal Justice System

A number of the evidentiary and procedural changes introduced by the amendments were intended to reduce the humiliation and distress experienced by victims who participate in sexual assault trials. While the best source of information on the extent to which this aim has been achieved is obviously the victims themselves, interviews with preamendment victims were not possible. We, therefore, asked practitioners their perceptions of whether the amendments have made the experience of participating in the criminal justice system more or less harrowing for victims.

Of the six crown counsels interviewed with both pre- and post-amendment experience, five were able to give an opinion. Four felt that the experience of becoming involved in the criminal justice system had become slightly, or modestly, less harrowing for victims over the last five years. One disagreed, feeling that things had become worse.

The four who perceived an improvement were asked about the importance of various reasons for this improvement. The most important reason was greater sensitivity to victim needs on the part of the police and crown and better preparation of the victim for the trial experience. All considered these to be a major factors. A slightly less important, but still important, reason was the restriction on past sexual history introduced by Bill C-127. This was cited as important by three of the four counsels. Two thought that better protection offered the victim's identity was instrumental. The abrogation of the recent complaint rules and the removal of the corroboration rules were considered important explanations by one prosecutor each. One believed the greater involvement of the Children's Aid Societies and other social agencies helped the victim through the criminal justice system.

It is worthwhile noting that respondents were asked to rate these factors (or suggest alternatives) on a one to seven scale where one was "extremely unimportant" and seven "extremely important". To be conservative, we have only reported answers of four, five and six as identifying factors that carry some weight. Answers for all factors ranged from two to seven, thus, all factors can be considered to have at least some marginal influence.

The police force response indicated that the police also believe that the victim's experience of the criminal justice system has become less harrowing over the past five years. The major reasons for this improvement are seen as the greater protection offered to the complainant's character (the "rape shield" provisions of Bill C-127) and because sexual assault is easier to prove than was the old offence of rape (the removal of the corroboration requirements and the looser definition of sexual assault).

Sexual Assault Centre workers are less sanguine about changes in the victim's experience of the criminal justice system. The two workers with pre and post amendment experience do not believe that the felt experience of victims has altered substantially over time, although one noted that the restrictions on past sexual history evidence was a positive step. Interestingly, two of the four counsellors with only post-1983 experience believe that victims have a slightly easier time now because of changes in general societal attitudes towards the crime and victims of sexual assault.

6.0 RECOMMENDATIONS FOR IMPROVEMENTS BY PRACTITIONERS

In the preceding two chapters, we have described the kinds of impacts that the 1983 amendments have had on the processing of sexual assault reports and the experience of the victim of the criminal justice system from the perspective of practitioners and of sexual assault victims. While few practitioners working in the criminal justice system and related agencies would argue that the amendments were not positive, problems still remain. In this final chapter we present the opinions of our key informants as to the nature of outstanding problems and the types of solutions that might help alleviate these concerns. Before presenting these findings we briefly summarize the major impacts and effects that have been attributed to the 1983 amendments by our respondents.

6.1 Summary of the Impacts of Bill C-127

The amendments were expected to shift the emphasis from the sexual aspects of the assault to the assaultive nature of the offence. Only a minority of crown and defence lawyers had perceived such a shift and only two of twelve were willing to ascribe this slight shift to the amendments. There was no general agreement that such a shift was a plausible outcome of the legislative changes.

Modest changes had been noted in the types of cases being reported. A minority of respondents noted increases in spousal assault reports. Protection had been extended to spouses under Bill C-127, but both practitioners and police occurrence reports suggest the increase in reporting of these types of cases to be very slight.

Although the majority of respondents had noted an increase in reports of child sexual abuse cases, few were willing to ascribe this to the legislative amendments. Increased public awareness of this issue and greater willingness to report recent and past incidents were considered to be the primary reasons for this change. The more relaxed definition of sexual contact and corroboration requirements under section 246 had also encouraged the police to use section 246 in preference to incest or to other Criminal Code sections applicable to child sexual abuse offences.

Some practitioners also agreed that the amendments had resulted in the greater willingness of the criminal justice system to accept "dubious" cases or cases that would not have been prosecuted in the past because of the sexual reputation of the complainant (e.g., prostitutes) or because of the difficulty of corroborating complaints of sexual touching. This broadening of the definition of "appropriate" cases was expected from the amendments and, in the view of a substantial minority of practitioners, is being achieved to some extent.

Crown counsel tended to agree that the removal of the corroboration requirements, restrictions on the admissibility of sexual history evidence and abrogation of the recent complaint rules have enhanced their chances of obtaining convictions in sexual assault cases. The police and Sexual Assault Centre workers also displayed positive attitudes towards these evidentiary changes. In fact, the majority of both crown counsels and defence lawyers considered that the earlier statutes were inadequate to deal with the crime of sexual assault. Crown counsel tended to consider that the earlier statutes were unreflective of societal norms and thus needed to be altered.

Both crown respondents and the police officer who prepared the force response believed that the restrictions on past sexual activity evidence had contributed to the improvement perceived in the victim's experience of the criminal justice system. Greater sensitivity in the handling of sexual assault victims, independent of the 1983 amendments, was also generally conceded as an important reason for recent improvements in how victims might experience their involvement in the criminal justice system.

6.2 Outstanding Problems

Despite these modest successes, problems are still perceived with the processing of sexual assault reports and victims. We have grouped the concerns raised by our respondents into four areas: reporting, obtaining convictions, sentencing, and treatment of the victim.

6.2.1 Reporting

Hospital and Sexual Assault Centre workers in the interviews discussed the reasons that they believe underlie victims' reluctance to report the assaults to the police. The reasons included fear of retaliation by the assailant, fear that the police would be unsympathetic, intimidation by the types of issues that would be raised at a trial or by the length of the trial process, the feeling that reporting would not result in the type of resolution they wanted, the lack of support from family or friends and fear of publicity. These factors constrain reporting to the police and cause some victims to be reluctant to have their charges pursued by the police and crown.

The low level of reporting of domestic sexual assaults might also be considered a problem area although it was only explicitly raised by the police sergeant responsible for preparing the force response and one Sexual Assault Centre worker.

The increased reporting of child sexual abuse incidents is encouraging in light of research that suggests a high incidence of child sexual abuse in the general population.

Problems remain with the reporting and processing of these cases; however, as these are the subject of a separate report, we will not pursue this issue further here.

Beyond the factors cited earlier as constraints on reporting of sexual assault incidents, Sexual Assault Centre workers and the police sergeant also considered that reporting was constrained if women had poor self-images and a limited understanding of their rights. Stereotypes that encourage women to consider themselves as partly responsible for being assaulted or without the right to insist upon respect for their personal integrity, and the continued stigma attached by society to sexual assault victims, discourages some women from defining sexual assaults as crimes or in seeking redress.

6.2.2 Convictions

Despite perceived improvements in the ease of obtaining convictions, some crown, police and Sexual Assault Centre respondents consider that convictions were still too difficult to obtain. Judges and juries still adhere to old-fashioned notions of the appropriate behaviour for women and for sexual assault victims. The conduct of the victim immediately preceding and following the assault influences attitudes towards the culpability and credibility of the complainant. A minority also suggested that the lack of corroboration was still problematic as the man's word would usually be taken over the women's if it came down to his word against hers. Stereotypes of appropriate victims and assailants also influenced police attitudes in the opinion of some Centre workers and court outcomes in the opinion of some crown counsel.

Compliance with the spirit of the amendments is not generally considered a problem by either the crown counsel or defence lawyers we interviewed. The majority agree that the amendments have been implemented as intended. It is interesting to note that the majority of crown counsel (five of six) believe that the new amendments do not violate the defendant's right to a fair trial. Defence lawyers, perhaps predictably, disagree. Four of six feel that the amendments violate the rights of defendants.

6.2.3 Sentencing

We asked crown and defence respondents their opinions about the sentencing of sexual assault offenders. The majority (five of seven) of crown counsels believe that sentences are too low. This problem was most often noted with respect to section 246.1 cases. Although repeat offenders and child sexual abusers were also considered to receive too short sentences, several respondents also made the point that incarceration was not always the most appropriate form of "treatment".

6.2.4 Treatment of the Victim

The majority of the outstanding problems identified by practitioners concerned how victims were treated by the various agencies considered in this study. Our findings echo the often repeated claim that the criminal justice system does not adequately care for the victims of crime. As one observer has noted:

> ...one should never lose sight of the fact that the criminal justice system as presently constituted was never intended to place much emphasis on doing justice to victims, other than seeing that offenders are appropriately punished.[1]

This was written in 1980, and despite improvements noted in the manner in which sexual assault victims are handled, it still has application in Hamilton-Wentworth today.

Not all the problems noted with the treatment of victims can be laid at the door of the criminal justice system. According to the hospital emergency staff interviews, some women experience the Adult Sexual Assault Examination as traumatic. (One believed that all women undergoing the examination had this reaction to some extent.) Although the use of the kit is strongly supported by the police and hospital staff and there was no suggestion that this needed attention, it was noted that the manner in which the examination is performed can be unduly stressful if performed without compassion and sensitivity.

Sexual Assault Centre workers were generally praised for the types of emotional support they provided to victims throughout the process, and their role in providing information and advice to victims was also appreciated. On the other hand, problems had been experienced as a result of their advocacy role. One hospital worker commented that "radical feminism is not always an appropriate response", and the police believe that the presence of Centre workers at some interviews can create tensions between the victim and police. We have no independent or objective evidence to support or rebut these views, nor can we be assured that the majority of police officers would echo the opinions expressed in the police force response to our interview instrument.

Much more problematic, in our opinion, is the considerable degree of consensus among respondents from the various agencies that police officers do not uniformly exhibit sensitivity to sexual assault complainants. Crown prosecutors, hospital emergency staff and Sexual Assault Centre workers believe that, despite improvements, some officers continue to treat complainants as if they were responsible for the assault or fabricating the charge, or display general insensitivity to the emotional state and needs of the victim. This lack of empathy was seen to stem from lack of

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[1] C.T. Griffiths, *et al., Criminal Justice in Canada* (Toronto: Butterworths, 1980), p.31.

understanding of the shame and distress felt by victims, professional training that emphasized clinical detachment at the expense of humanitarian impulses, and lack of appreciation for the broader societal attitudes and behaviours that are preconditions for the crime of sexual assault. We must stress that not all respondents were unhappy with the attitudes and behaviour of the police and that problems were not considered as endemic throughout the police force. Respondents from all three agencies consider that most police officers are very sympathetic and skilled in their treatment of victims.

We believe these findings clearly suggest an area for improvement, primarily because representatives from all agencies noted the same failing. Perceptions of the reception given by the police to complainants will also influence reporting. Once a report is made, the victim will be in contact with the investigating officer from the outset through to the end of the trial. Thus, the quality of this relationship is a very significant factor influencing the victim's experience of the criminal justice system.

Sexual Assault Centre workers also suggested that crown counsel could improve their relationships with sexual assault victims. Problems noted generally concerned poor preparation of victims for the trial experience and the failure to keep the victim informed about the progress of the case.

6.3 Suggested Solutions by Practitioners from Criminal Justice and Related Agencies

Given this reading of outstanding problems, what kinds of legislative and nonlegislative changes were recommended by practitioners to improve the processing of cases and the way in which victims of sexual assault experience the criminal justice system? We stress that these are not the authors' recommendations. Rather, these are the views expressed by key informants regarding improvements to the current situation.

Crown counsels were asked if further changes to the legislation were required. Two agreed, three disagreed and one was uncertain. The strength of agreement or disagreement varied considerably, indicating no particular consensus as to what kinds of changes would be acceptable. Suggestions included more leeway to clear the courtroom in sexual assault trials, primarily to ease the trauma experienced by children testifying in front of the accused. One felt that public trials were not necessary for sexual assault cases given the discomfort experienced by the victim in describing the details of the assault and the fear of publicity. Changes to the rules concerning evidence given by children were also raised, however, these will be discussed in a companion report describing key informant attitudes towards the processing of sexual abuse cases.

Another suggestion was for more widespread use of experts to give evidence concerning the reactions of victims after an assault. This would help counter

stereotypes that limit the conduct of victims after the assault to narrow ranges (e.g., rapid complaint and evident distress).

One crown prosecutor felt that the amendments may in some cases violate the rights of the accused to a fair trial and that, therefore, restrictions on prior sexual history evidence may need to be relaxed in some instances.

While the majority of the defence and crown respondents believe that the amendments have been implemented (the rest were usually neutral rather than in disagreement), two Sexual Assault Centre workers felt that stronger enforcement of the abrogation of the recent complaint rules, restrictions on past sexual history and elimination of the corroboration requirements is necessary. Our key informant interviewees have suggested that corroborative evidence is still an important factor in trial outcomes because stereotypes still abound and convictions are only obtained if no doubt remains as to the guilt of the accused. Recent complaint rules have been abrogated yet defence lawyers are still able to suggest that the complaint was not raised when it was natural to do so. Fear that prior sexual activity will be an issue at trial is also considered by hospital and Centre workers to constrain reporting. These findings suggest that compliance should be monitored in terms of the "spirit" of the legislation and not simply the letter. They also suggest that public education as to the new legislative provisions should be enhanced if reporting is being constrained by erroneous impressions of the law (rather than uncertainty as to the outcomes of the Charter challenge appeals underway at the time of this research).

Most of the recommended solutions concerned improvements in the way in which victims were treated. These suggestions included:

- sensitivity training for hospital workers, police investigators, crown prosecutors and judges to make them more aware of the emotional state and needs of sexual assault victims;

- more training of Sexual Assault Centre workers in the preservation of evidence and in testifying in court;

- more female doctors or specialized sexual assault teams in the hospital to handle victims in a compassionate manner;

- specialized teams of police and social workers to respond to reports of sexual assault. It was recommended that police officers should be selected on the basis of their attitudes and willingness to work in this area; social workers would provide emotional support and help keep the complainant informed as to the progress of the case;

- greater cooperation between the police and the Sexual Assault Centre in handling sexual assault cases. Centre workers are trained to deal with

victims, but are not trained to help preserve evidence or provide testimony in court. Police have this training, but sometimes lack sensitivity. Greater cooperation could help ease the trauma of complainants, and improve the capacity to keep the victim informed while not interfering with the collection of evidence and prosecution of the cases;

- the establishment of more formal protocol arrangements for sexual assault cases between the Centre and the police;

- continued efforts to alter societal attitudes towards the crime and victims of sexual assault. Victims are still considered as blameworthy;

- greater expenditure of public funds to provide support systems for victims whether these take the forms of temporary shelter, crisis counselling or longer term counselling. Police, hospital and Centre workers pointed to the lack of funding for their agencies that prevent them from offering the kind of support they believe is warranted;

- increased specialisation of crown attorneys in sexual assault cases. Again, they should be selected on the basis of their attitudes and interest in this type of case but not on the basis of gender;

- greater cooperation between the crown's office and social workers or Sexual Assault Centre workers in the handling of sexual assault victims; and

- increased use of victim impact statements in sentencing decisions to help ensure that sentences fit the crime and to increase the victim's conviction that it is possible to influence process.

7.0 SUMMARY AND CONCLUSIONS

In the second chapter, we outlined the four major objectives of this study. These were:

- to describe the current response of the criminal justice system and related agencies to reports of sexual assault;
- to delineate the direction and extent of any changes in practices and outcomes since the implementation of Bill C-127, with particular emphasis on determining the extent to which the legislation is responsible for these changes;
- to describe victims' felt experience with the criminal justice system and related agencies; and
- to document improvements suggested by practitioners to better achieve the intentions underlying the 1983 legal reforms.

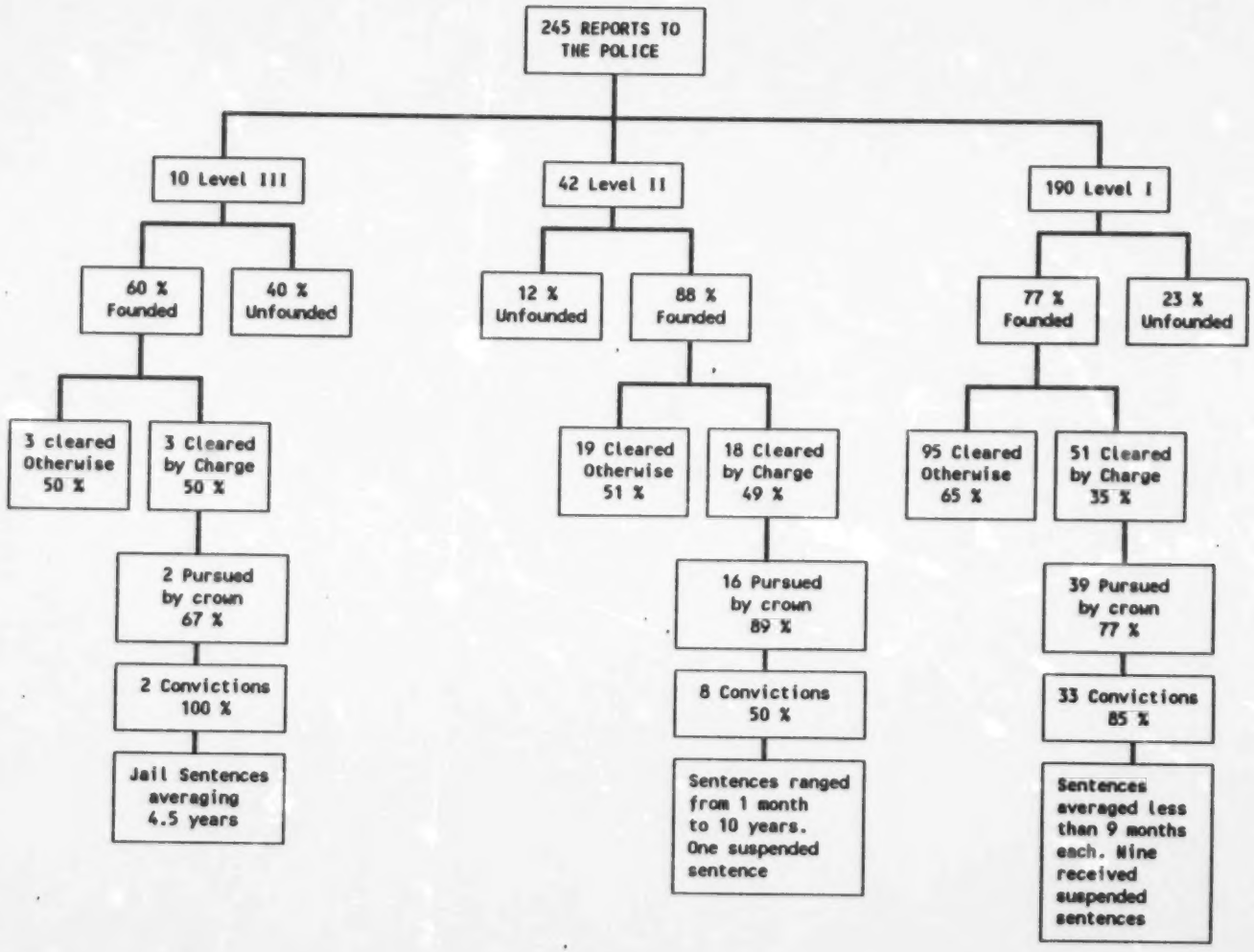
In the last four chapters we have presented our study findings with respect to these four research objectives. These findings included both objective and subjective data collected from a variety of perspectives. It is easy to lose sight of the essential findings in the profusion of detail produced by each line of evidence, and so in this last chapter we summarize the key findings according to the four primary study issues cited above.

7.1 Current Response to Reports of Sexual Assault

In this section we summarize our findings regarding how cases of sexual assault are received and acted upon by the criminal justice system and related agencies in Hamilton-Wentworth. We begin by providing an overview of the flow of reports through the criminal justice system.

Table 50 displays an overview of the flow of sexual assault reports in our sample for which the police completed an occurrence form in 1984/85. Of the 245 reports included in our sample, 77 per cent were founded and 23 per cent were classified as unfounded. This varied significantly between the three levels of sexual assault. The highest founding rate was for Level II sexual assaults (88 per cent), followed by Level I assaults (77 per cent), while the lowest founding rate was for Level III aggravated sexual assaults (60 per cent).

Table 50 **Flow of Sexual Assault Reports, 1984/85**


245 REPORTS TO THE POLICE
10 Level III
42 Level II
190 Level I
60 % Founded
40 % Unfounded
12 % Unfounded
88 % Founded
77 % Founded
23 % Unfounded
3 cleared Otherwise 50 %
3 Cleared by Charge 50 %
19 Cleared Otherwise 51 %
18 Cleared by Charge 49 %
95 Cleared Otherwise 65 %
51 Cleared by Charge 35 %
2 Pursued by crown 67 %
16 Pursued by crown 89 %
39 Pursued by crown 77 %
2 Convictions 100 %
8 Convictions 50 %
33 Convictions 85 %
Jail Sentences averaging 4.5 years
Sentences ranged from 1 month to 10 years. One suspended sentence
Sentences averaged less than 9 months each. Nine received suspended sentences

Considering only those reports labelled as founded, overall only 38 per cent (72 cases) were cleared by charge. There were, however, striking differences in the clearance rates by level of sexual assault. One-half of the Level III and 51 per cent of the Level II founded reports were cleared by charge. In contrast, only 35 per cent of the Level I founded reports were cleared by charge.

There was further attrition of cases between the police and crown. Approximately 79 per cent of the cases cleared by charge by the police were pursued by the crown. Again, there were significant variations by the three levels of sexual assault. The crown pursued 89 per cent of the Level II cases, 77 per cent of the Level I cases and 67 per cent of the Level III cases cleared by charge by the police.

The overall conviction rate for sexual assault cases pursued by the crown was 75 per cent. Broken down by level, we found that the highest rate of conviction was for Level III assaults (100 per cent) followed by Level I assaults (85 per cent), while the lowest conviction rate was for Level II assaults (50 per cent).[1]

According to the respondent from the police force, the decision as to whether or not a complaint is founded is based on a number of factors that must be considered simultaneously. These factors include the age of the complainant, the availability and quality of corroboration for either party, the demeanour of the complainant and the context of the incident (e.g., was it logistically possible, etc.). The police also pay attention to the elapsed time between the incident and the report, and the relationship between assailant and complainant.

In Chapter Three of this report, we tested a number of variables we believed to be related to the founding and clearance rates for cases of sexual assault reported to the Hamilton-Wentworth Regional Police during 1984/85. These variables included the availability of corroborating evidence, the character and conduct of the complainant, the relationship between the complainant and assailant and the characteristics of the offender.

Contrary to our expectations and the perceptions of the respondent from the police force, we found that the availability of corroborating evidence (forensic test results, other material evidence or a corroborating witness), and whether or not the complainant had been injured in the assault had no impact on the founding decision. We did find that all reports for which the suspect admitted guilt are considered founded compared with 27 per cent of reports where such an admission was not made or the suspect was not apprehended. Of course this relationship is expected.

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[1] Of course this may seriously understate the actual conviction rate as we do not know the outcomes for eight cases (50 per cent), and they have been included in the calculation of conviction rates. Thus, if we drop the eight unknown cases, the conviction rate for Level II cases rises to 100 per cent.

The nature of the sexual contact implies different opportunities for corroborative evidence. (As noted, however, the availability of corroborative evidence was statistically unrelated to the founding rate.) We categorized reports as involving sexual touching or penetration (anal or vaginal intercourse or digital penetration). We did not find any statistically significant relationships between the nature of the sexual contact and the founding decision.

There was also no statistically significant relationship between the founding decision and the relationship between assailant and complainant. There was a mildly significant relationship between the founding decision and whether or not the assailant had a prior criminal record. Reports involving suspects with prior criminal records (for sexual assault or some other offence) are marginally more likely to be considered as founded than reports involving suspects with no prior convictions.

We were also surprised to find no significant associations between the founding rate and such variables as the gender of the victim or speed of reporting to the police (when categorized very crudely as less than or more than 24 hours). We did find that the age, perceived moral character and conduct of the complainant appear to influence the founding decision. If the complainant had a prior criminal or juvenile record, or if the police suggested during the interview that the complainant was lying or inconsistent in her statements, or was promiscuous or of "bad character", reports were between 1.9 and 3.5 times more likely to be considered unfounded compared to reports without these characteristics (refer back to Table 17). These latter relationships validate the perceptions of the respondent from the police force.

We also explored a number of factors expected to be associated with the clearance rate (i.e., reports cleared by charge) for founded sexual assault reports. The police force respondent listed the following factors as being important in the decision as to whether or not to lay charges: the age of the complainant; the relationship between the assailant and complainant; a prior criminal record for the suspect; corroboration of the victim's allegations; and the elapsed time between the incident and the report.

During the analysis of the data collected from the police occurrence reports, we found that the availability of corroborative evidence is very important to the charging decision. Founded complaints for which corroboration exists are 2.3 times more likely to be cleared by charge than are uncorroborated reports (64 versus 28 per cent). As one might expect, there was an even stronger association between the charging rate and an admission of guilt by the suspect. Charges were laid in 83 per cent of reports in which the suspect admitted guilt compared to 24 per cent of reports for which no guilt was admitted or the suspect could not be apprehended.

We also found that the nature of the sexual contact was significantly associated with the charging decision. Twenty-eight per cent of sexual touching cases were cleared by charge compared to 45 per cent of penetration cases.

The age of the complainant was also associated with the charging decision. Complainants under the age of 14 and over the age of 18 were less likely to have founded reports cleared by charge compared to complainants between the ages of 14 and 18. In the case of children, this probably stemmed from the lack of corroborative evidence, as prior to passage of Bill C-15 in January 1988, common law practice required that unsworn testimony by a child under the age of 14 be corroborated by material evidence. For adults, the lower charging rate may be related to the relatively higher proportion of stranger assaults where the perpetrator may not have been identified or apprehended.

Founded reports involving an offender with a prior record are 2.4 times more likely to be cleared by charges than are reports involving an offender with no prior criminal convictions (64 versus 26 per cent). It may be that suspects with a prior record are easier to identify and locate than are suspects without a prior record.

The character and conduct of the complainant were not significantly associated with the charging decision. This was somewhat surprising given the importance of these factors in the founding decision. The elapsed time between the assault and the report to the police (crudely categorized as less than or more than 24 hours) was not associated with the charging decision either.

Not all incidents of sexual assault in Hamilton-Wentworth are reported to the police. As noted in Chapter One, the academic literature suggests that a minority of cases are actually reported to the police. In fact, the Canadian Urban Victimization Survey suggested that as few as 38 per cent of sexual assaults in 1981 were reported to the police. While we have no data on the extent of underreporting in Hamilton-Wentworth, we have presented limited data regarding the incidents reported to the Sexual Assault Centre in 1984/85.

The Centre agreed to add two questions to their call record for a sample of callers during 1987. In essence, these questions asked whether or not the caller had or intended to call the police regarding the assault. If callers did not intend to contact the police, their reasons were queried. The results of these calls provides an indication of the degree to which the two populations are different. Over one quarter of the people in our sample of calls made to the Centre during 1987 indicated that they did not intend to contact the police. The most common reasons cited included wanting to forget the incident, fear that family members would learn of the assault, and fear of retaliation by the assailant. A small minority of respondents also cited mistrust of the police or fear of what would happen at court as reasons for not reporting to the police.

We also can compare and contrast the differences in complainant and incident characteristics between the two groups. For example, there were a number of differences between the complainants included in our sample of Sexual Assault Centre callers and reports made to the police. First, all of the calls to the Centre were made by female victims, while 17 per cent of the sample of police reports were made by male

complainants. The typical Centre caller disclosing a recent sexual assault was also likely to be older than the typical complainant reporting to the police. Two thirds of our sample of callers to the Centre were over 16 years of age compared to 47 per cent of the female complainants reporting to the police in 1984/85 (40 per cent of complainants were under 16 if we include males).

A greater proportion of the incidents reported to the Centre, rather than to the police, involved stranger assaults (42 and 37 per cent respectively). Controlling for age, however, we found that 61 per cent of the incidents reported to the police involving adult female complainants were perpetrated by strangers. Thus, relative to the adult female sample who contacted the police, the Centre appears to receive fewer calls regarding stranger assaults.

Over one-half of the incidents reported to both agencies occurred in the victim's or offender's home (or common residence). A greater proportion of the incidents reported to the Centre, rather than to the police occurred in the victim's home (42 and 26 per cent respectively).

There were also differences in the types of sexual contact reported. Over one-half (58 per cent) of the callers to the Centre specified that the assault included vaginal intercourse compared with 20 per cent of the reports to the police.

The profiles of cases presented in Chapter Three and summarized here indicate that there are a variety of differences in the populations reporting to the two different agencies. The degree of overlap, however, which is difficult to determine without tracking cases across agencies, is beyond the mandate of this study.

7.2 Changes in Practices and Outcomes Since Bill C-127

7.2.1 Changes in the Reporting Population

The amendments were expected to provide legal protection to a wider range of Canadians and from a wider range of nonconsensual sexual activities. Thus protection was extended to wives, changes made the legislation gender-neutral (sexual assault could be committed by a man or woman on a man or woman), and the crown no longer had to prove penetration of the vagina by the penis.

We relied upon two lines of evidence to identify to what extent changes had occurred in the type of complainants coming forward or the type of sexual activities involved in these incidents: a comparison of police occurrence reports from before and after the amendments and the opinions of our key informants. In order to assess the causal impact of the amendments on any observed changes, we relied on logic (is the causal relationship plausible?), statistical manipulation of the quantitative data to control

for possible competing explanations and expert opinion. The research design is weak in its ability to eliminate competing explanations and thus this "triangulation" of different lines of evidence is necessary.

The first difference that we noted between the pre and post amendment periods was an overall increase in the police caseload of 39 per cent. We suggested that it would be implausible to assume that the number of sexual assaults had increased by such a large percentage, thus we conclude that there has been a definitive increase in reporting rates in Hamilton-Wentworth since the sexual assault legislation was proclaimed.

In order to gain at least a preliminary notion of the degree to which the heightened reporting rates can be directly attributed to the legislative amendments, we contrasted the reports along a number of dimensions. The amendments explicitly extended protection from nonconsensual sexual actions by persons of the same sex. Some legal observers have seen the "degenderization" of the sexual assault legislation as a purely nominal change that would not necessarily be reflected in any changes in the dimensions of reporting.[2] Only one crown counsel had perceived a (slight) increase in the number of cases involving a complainant and assailant of the same sex. Using the police file data, we found that males have increased from nine to fifteen per cent of all complainants since the legislative amendments. When we controlled for age and gender, however, we found that the proportion of adult male complainants had actually dropped over time while the proportion of reports made on behalf of young male complainants has increased significantly.

In general, we found that the average age of complainants had dropped from 20 to 16 years of age. The greatest increases were among complainants under 13 years of age (and, in particular, males in this age grouping). We are reluctant, for three primary reasons, to suggest that the legislative amendments are the major causal factor explaining these shifts in the age of complainants over time. First, the amendments were addressed primarily to adult complainants. Second, until Bill C-15 was proclaimed in January 1988, the ability of child complainants under 14 years of age to give evidence was limited by common law practices and by the *Canada Evidence Act* (e.g., the need for corroboration). In addition, the majority of both crown counsel and defence lawyers, while noting an increase in complainants under the age of 16, were reluctant to credit Bill C-127 with all or even part of this increase. Our respondents considered that improved public awareness of child sexual abuse and a greater willingness to report suspected cases were the causal factors.

It is unlikely that Bill C-127 is the predominant factor explaining these changes. It is much more likely that the shift in the age distribution of complainants results from greater public awareness of, and readiness to report, suspected incidents of sexual abuse. However, it is also very likely that there has been a concomitant shift in police and

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[2] For example, see: Boyle, *Sexual Assault*, p.41.

crown practices regarding the laying of charges. To assume otherwise is to ignore the interdependence of social values and mores and criminal justice system practices.

Part of the apparent increase might be attributed to changes in classification procedures. One could expect such a shift on purely logical grounds, as section 246 does not require proof of intercourse and thus covers a wider spectrum of incidents (e.g., sexual touching) than do sections 146, 150 and 153. Unfortunately, it is impossible to empirically prove such a shift as we did not review preamendment files for these latter Criminal Code sections. We do note, however, that the respondent from the Hamilton-Wentworth Regional Police related that section 246 is used for child sexual abuse cases in preference to older sections as it is less restrictive in terms of the type of sexual contact, burden of proof, etc., and offers much greater sentencing latitude.

Also related to the shifts in the age distribution of complainants over time are the shifts in the relationship between complainant and assailant. We found a significant drop in the proportion of stranger assaults from 64 to 42 per cent since the amendments were implemented. This drop is at least partly due to the higher incidence of child victims in our post amendment sample. Child sexual abuse reports are much less likely to involve a stranger than are complaints by adults. The drop may also be partly due to greater public awareness of the dangers of putting oneself in risky situations.

We also found a small increase in the number of reports of assault by spouses, common law partners and ex-spouses. While the increase (from zero to three per cent of reports) is not statistically significant, we suggest that it is substantively significant for two reasons. First, the legislative amendments were intended to extend protection to wives and common law partners.[3] Second, while the majority of crown counsel and defence lawyers did not perceive an increase of spousal sexual assaults over time, a minority of lawyers did perceive an increase in spousal assaults. None of these respondents were willing, however, to unequivocally attribute this increase to the legislation. Instead they pointed to changes in public mores that encouraged reporting and changes in the "political" climate within the criminal justice system that encouraged legal action on complaints involving spousal assaults.

7.2.2 Changes in Reporting Outcomes

Given the increased number of younger complainants since the legislation was implemented, significant changes occurred in such dimensions as the person who first reported to the police, the agency of first contact and the proportion of complainants contacting various agencies. For example, over time the proportion of reports made to the police by the victim declined significantly from 75 per cent of preamendment reports to 59 per cent of post amendment reports.

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[3] Specifically, section 246.8 states that a husband or wife, whether living with their spouse or apart, may be charged with sexual assault.

Similarly, the proportion of reports made first to the police declined from 91 per cent in the preamendment period to 73 per cent in the post amendment period. Reports made first to Children's Aid Societies increased over time from three to fifteen per cent of reports. In fact, the proportion of police reports that included contact with Children's Aid Societies increased significantly over time from 13 to 35 per cent.

We now turn to the more important issue of changes in the founding and clearance rates since the implementation of Bill C-127. There was virtually no difference in the founding rate over time (78 to 79 per cent of cases in both the pre and post amendment periods were considered as founded). The extent to which the amendments could be expected to have an impact on the founding rate is, however, questionable, especially given that the legislation did not address the issue of the exercise of police discretion to label reports as founded or unfounded.

Considering only founded reports, we noted significant differences over time. The percentage of founded reports cleared by charge increased significantly from 26 per cent of preamendment reports to 38 per cent of post amendment reports. Conversely, the proportion of founded reports that were not cleared by charge fell significantly from 74 per cent of preamendment reports to 62 per cent of reports made in the post amendment period.

There were interesting differences in reporting outcomes based on the gender and age of the complainant. For example, in the preamendment period, male complainants were significantly more likely to have their reports cleared by charge than were female complainants. Approximately 37 per cent of all reports made by male complainants were cleared by charge compared to 19 per cent of reports made by female complainants. As noted in Chapter Four, this difference in the charging rate by gender may have stemmed from the lack of an explicit corroboration rule for offences under section 156 (indecent assault on a male).

Founding and charging rates also varied significantly over time when controlling for the age of the complainant. For example, the proportion of founded reports by complainants under 14 years of age fell from 91 per cent of preamendment reports to 78 per cent of post amendment reports. Similarly, the clearance rate for founded reports involving complainants under 14 declined marginally over time from 38 to 33 per cent. In Chapter Four, we suggested that the shift in the founding rate for child sexual abuse complainants might be a result of the greater media attention to child sexual abuse in recent years such that parents, caregivers and professionals are much more willing to report their suspicions of child sexual abuse. In the past, they may have been more cautious and acted only in circumstances where the evidence was incontrovertible. Thus, it is plausible that as a result of increased reporting of a broader range of cases involving sexual abuse, fewer reports investigated by police are classified as founded.

In contrast, reports by, or on behalf of, youths aged 14 to 18 are much more likely to be cleared by charge since the amendments were implemented. One quarter (26 per cent) of the founded preamendment cases involving complainants aged 14 to 18 were cleared by charge compared with 50 per cent of the post amendment founded reports. Similarly, the proportion of reports cleared by charge that involved adult complainants increased significantly over time from 18 to 35 per cent of founded reports.

7.2.3 Changes in the Factors Affecting Reporting Outcomes

A major difference between the pre and post amendment periods is the significant decline in the influence of the level of intoxication of the victim on the founding decision. During Time One, only one third of the reports that indicated the victim was intoxicated were considered as founded, whereas, in Time Two, the percentage of such cases rose to 68 per cent.

It is difficult to determine, however, the extent to which the changes in founding and charging rates can be attributed to the amendments. While our data do not allow us to conclude that the amendments have improved the charging rate, the practitioners whom we interviewed during the course of the research suggested that the amendments may have altered the types of cases that go to trial. For example, one-half of the crown counsel and defence lawyers interviewed believe that, as a result of the amendments, protection has been extended to women who were effectively considered "unrapeable". Two respondents qualified this answer by noting that wives used to be considered as "unrapeable". One indicated that he thought the amendments had helped make it easier for prostitutes to pursue sexual assault charges (e.g., the changes regarding the lines of acceptable questioning regarding previous sexual history and the change in focus from the sexual to the assaultive aspects of the offence) although we found no statistically significant increase over time in the proportion of police occurrence reports that contained the suggestion that the complainant was promiscuous or partly to blame. Another respondent noted that more "teenage sexual relationships" are now being brought forward.

The analysis of the police file data revealed that the availability of corroborating material evidence, admissions of guilt by the suspect, the nature of the sexual contact and the offender's prior criminal record were all significantly associated with the charging decision in both the pre and post amendment periods. In fact, it appears that the relationship between the charging rate and the existence of corroborating material evidence has become stronger over time. For example, in the preamendment period, one third of the cases with corroborating material evidence were cleared by charge compared to 49 per cent of the post amendment cases with such evidence. This was somewhat surprising and difficult to explain given the relaxation of the corroboration requirements included as part of the amendments.

7.2.4 Changes in Court Outcomes

According to the police file data, the crown pursues the majority of sexual assault charges laid by the police. It is difficult to make direct comparisons between the pre and post amendment periods because the Criminal Code categories are not comparable. We did note, however, that the crown pursued a greater proportion of charges laid by the police subsequent to the amendments than was the case prior to them (the crown pursued 92 and 71 per cent respectively of the charges laid by the police).

We also found a marginal decline in the rates of conviction over time; however this was not a significant decline and it may have been at least partly due to poor data quality.[4] In the preamendment period the overall conviction rate for rape and indecent assault cases was 80 per cent compared to an overall conviction rate for post amendment sexual assault cases of 75 per cent.

Unfortunately, the nature of the quantitative police file data does not lend itself to interpretations regarding the types of factors important to the final court outcomes. We therefore relied primarily on the perceptions of practitioners in the criminal justice system to determine what impacts the legislative amendments have had on the trial process and, in particular, on final court outcomes.

During the interviews with crown counsel and defence lawyers, we were told that the amendments have enhanced the crown's chances of successfully prosecuting sexual assault cases. Respondents pointed to the abrogation of recent complaint rules, the inadmissibility of evidence regarding the prior sexual history of the complainant and the relaxation of the corroboration requirements as the factors underlying the crown's enhanced position.

It is interesting, however, that the majority of respondents had not noticed an enhanced rate of conviction since the legislation was implemented. The lack of outward signs of the perceived enhancement of the potential for convictions may stem from the changes noted in the types of cases coming forward. For example, the post amendment sample of cases included a significant proportion of sexual abuse cases in which corroboration may have been a major issue.

In order to broaden our understanding of the factors that affect the final court outcomes, we asked crown and defence lawyers to comment on the factors they perceived to be important to obtaining convictions/acquittals. All of the crown counsel related that despite the abrogation of the rules regarding recent complaint, the behaviour of the complainant immediately after the assault can still be introduced at court and is influential in jurors' perceptions of the complainant's credibility. One-half

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[4] The final outcomes were unknown for 11 of the 57 cases pursued by the crown. If these cases were deleted from the calculations of conviction rates, then there would be a marginal increase in the rate, but again not a statistically significant increase.

of the defence lawyers also suggested that the recency of the complaint remains a pertinent issue in sexual assault cases, at least in the minds of members of the jury. We also note that the timing of the disclosure of the assault was raised in three of the six trials we observed.

All of the crown counsel and three of the defence lawyers interviewed perceived corroboration to be an important factor influencing court outcomes, especially in cases where it is the defendant's word against that of the complainant. Thus, they believe that important factors influencing final outcomes include whether or not there was physical force, a weapon, resistance by the victim and injuries to the victim. We note that in two of the trials that we observed, there was no material corroboration for either complainant or accused. In both of these cases the defendant was acquitted by the triers of fact.

While crown respondents perceived that the prior sexual history and moral character of the complainant are still important factors influencing final court outcomes, our trial observations tend to controvert these perceptions. The complainant's past sexual history and general reputation was not raised in any of the trials we observed.

7.3 The Victim's Experience

In Chapter Five of this report we considered a number of factors concerning the treatment of the victim of sexual assault. In particular, we explored the institutional response to victims of sexual assault, the services sought by victims and the attitudes of victims towards the criminal justice system and related agencies in Hamilton-Wentworth. The basic design for the research, namely the complete lack of preamendment information regarding the victim's experience, makes it virtually impossible to speak to the issue of the impacts of the legislation on the victim's felt experience.

Our data has been limited primarily to the attitudes of a limited number of post amendment victims of sexual assault. These respondents do not represent the population of sexual assault victims both because of the small number of respondents and the fact that they were not randomly chosen. Archival data did not shed any light on this issue either, as the emotional state of the victim was not usually recorded. We are therefore left reliant primarily upon the opinions of practitioners from the criminal justice system and the Sexual Assault Centre to broaden our understanding of the sexual assault victim's experience.

Seven victims sought medical attention for assaults that took place after the amendments. Three of the seven were examined by a male doctor although they would have preferred a female. Of the six who commented on the quality of their reception at the hospital, the majority were satisfied. Only one complained of her treatment by hospital staff (delay in being seen, lack of privacy and lack of emotional support) and it is interesting to note that this was not at McMaster University Medical Centre, which is

the regional centre for sexual assault victims. Practitioners from other agencies generally were positive about the manner in which sexual assault victims are treated at this hospital and volunteered no suggestions for improvements.

Nine of our post amendment victims contacted the Sexual Assault Centre, usually for crisis counselling, but also for information and accompaniment. Of the eight who rated the quality of the help they received from the Centre, the majority were satisfied. Two were mildly to moderately dissatisfied. In total, three complained that their counsellors seemed unsure of their information and four felt that the Centre volunteer was not providing the type of emotional support or crisis counselling that they required. According to our key informants, Centre workers are generally praised for the role they play in providing emotional support to victims of sexual assault and in providing information and advice.

With respect to the victim's experience with the criminal justice system, practitioners were not unanimous in considering that the amendments had made the experience less harrowing. While a majority of the crown counsel interviewed believed that the experience of the victim had improved over the past five years, the primary causal factors included greater sensitivity to the emotional needs of victims on the part of practitioners, better preparation of the victim for trial, and the restrictions introduced by Bill C-127 on the prior sexual history of the complainant with persons other than the accused. Prosecutors also pointed to the institution of a victim-witness coordinator to help respond to the needs of the victim for information and support, and the assignment of sexual assault cases to specific crown counsel. These moves were independent of the amendments. The police force response also indicated that the victim has an easier time in court now, due to the restrictions on prior sexual history and removal of the corroboration requirements. The sergeant responsible for the force response also pointed to improvements in the victim sensitivity training given within the force, the designation of McMaster University Medical Centre as the regional sexual assault medical and forensic centre, and the development of a streamlined protocol for hospital visits, and attempts to match investigating officers to offences as factors that had made the experience less harrowing for victims. Again these developments were considered as independent of the legislative amendments.

The two Sexual Assault Centre workers with experience before and after the amendments do not believe that the experience of victims has altered substantially over the past five years. One of the two did believe that the restrictions on prior sexual history represented a positive step.

In summary, the majority of practitioners from all agencies that we contacted remarked that they had seen some improvements over time, and that the amendments appear to be an important causal factor in explaining the improvements although not the only one. The relatively more pessimistic conclusion of the Sexual Assault Centre workers is disquieting, but it may be that this is a reflection of their daily immersion in the psychological, social and legal aftermath of sexual assaults and their advocacy role

for further efforts with respect to this offence. On the basis of all lines of evidence (e.g., archival interviews and court monitoring), we conclude that the amendments have had somewhat of a positive effect on the treatment of the victim, although some victims are still being subjected to unnecessary trauma as a result of their participation in the criminal justice system. Further improvements in the experience of victims and the processing of sexual assault complaints, as the remaining discussion will suggest, require extra-legal solutions (i.e., nonlegislative).

Ten of the eleven post amendment victims of sexual assaults that we interviewed reported the incidents to the police. All were interviewed by male officers although seven of the ten would have preferred a female officer. The majority of these victims were very positive about the officers with whom they came in contact, considering them to be sympathetic and courteous despite the discomfort caused some by having to describe to a male the intimate details of the assault. Three were dissatisfied with at least one of the officers they encountered, finding him insensitive or reluctant to pursue their complaints.

The basically positive reaction to the police exhibited by our victims was consistent with the opinions of the key informants. We found a considerable degree of consensus among respondents from the hospital, Sexual Assault Centre and crown office that most officers are sympathetic and skilful in their handling of sexual assault victims. There was, however, the perception that a minority of officers display a general insensitivity to the emotional state or needs of the victim, sometimes treating complainants as if the victim were responsible for the assault or was fabricating the complaint. This is disquieting because of the centrality of the relationship between the victim and the investigating officer through to the end of the trial, and the role this relationship plays in determining public perceptions of the police reaction to reports of sexual assault. For example, both hospital and Sexual Assault Centre workers believe that fear that the police would be unsympathetic is an important factor constraining reporting. While this is not the most important reason in the view of the 1987 Centre callers, this perception is clearly influential. The public, in general, and the medical and social service agency staff who provide information and advice, must have faith in the police reaction if reporting of sexual assaults is to increase.

We also pointed out that relations between the police and the Sexual Assault Centre can be tense due, at least partly, to conflicts between their respective roles (solving crimes versus providing succour to the victim). Unfortunately the price of this tension may be paid by the victim. As one respondent noted, she was only told about the Centre after her interview with the police. In retrospect, she would have welcomed the presence of a support person during this interview. The police, however, are reluctant to have Centre workers present for fear that they will cause antagonism or because they might be subsequently required to testify in court (something for which they are not trained).

Seven of the post amendment victims saw their case go to trial. All but one were satisfied with the efforts made by crown counsel to prepare them for the trial. Only one was dissatisfied although we also suggested that the level of satisfaction might vary depending on whether or not the victim was required to testify. We also noted that the Sexual Assault Centre sometimes plays a role in preparing victims for the courtroom experience. Three of the seven victims also indicated that they were unhappy with the level of effort made by the crown prosecutor to keep them informed of the progress of their case.

These perceptions of recent victims were echoed in the key informant interviews. The role played by the police and Sexual Assault Centre workers in preparing the victim and keeping her informed was recognized in these interviews. Some Sexual Assault Centre workers were also concerned that some crown counsel assigned to sexual assault cases had little understanding of the psycho-social issues or little empathy for sexual assault victims.

While the majority of crown counsel and defence lawyers interviewed believe that the amendments have been implemented as intended, four of the five victims who testified in court found the experience to be extremely upsetting, primarily because they were made to feel as if they were to blame for what had happened. All four felt the defence lawyer went out of his way to intimidate and humiliate them, which suggests that assigning guilt to the victim is a favoured defence strategy. Our court monitoring data tend to support this finding. Of the trials observed the most favoured defences were consent, inappropriate behaviour on the part of the victim and denial of the incident.

Having to relate the intimate details of the assault in front of a room full of strangers is also a source of considerable discomfort. Two victims also indicated that the defence lawyer probed into their prior sexual history with other than the accused. This was very upsetting. Crown counsel apparently made no effort to stop this line of questioning, although one respondent indicated that the judge did so when she objected. Questions as to prior sexual history were not observed during the trials we monitored, nor was it possible to question the crown prosecutors about these allegations. Thus while they cannot be substantiated from another line of evidence, they raise questions about the implementation of the amendments.

Further, on the point of implementation, the issue of the timing of the complaint was raised in order to cast doubt on the credibility of the witness in two of the trials monitored. Two victims likewise indicated that this had been questioned by the defence at trial. Our legal informants also considered this to be an important factor, at least in terms of influencing juries' perceptions of the victims' credibility.

7.4 Outstanding Problems and Suggested Solutions

While our study indicates that the legislative amendments were essentially progressive, their potential for altering the processing of sexual assault reports has not been fully realized. For example, there has been virtually no change in the proportion of cases that end in conviction. Law reform requires more than changes to the Criminal Code. Specifically, changes in attitudes, practices and available resources are as integral to law reform as legislatively mandated changes. Moreover, problems are still perceived with the treatment accorded to sexual assault victims.

In this last section we summarize the concerns raised by key informants and victims and suggest to what extent these concerns are reflected in the quantitative study findings. We have organized these concerns, and recommendations for addressing them, into four generic groupings: (i) knowledge, education and consciousness-raising; (ii) roles and responsibilities; (iii) co-operation and communication; and (iv) minimizing the trauma for the victim.

7.4.1 Knowledge and Education

Our findings suggest that there are four basic areas where concerted efforts appear to be required in order to enhance current levels of knowledge and education. The first concerns the general public. Our findings regarding changes in the reporting population suggest that the general public may not be fully aware of the intent of the legislation. Of course, in order to test this notion, a survey of public awareness and knowledge of the law would need to be undertaken.

We believe, however, that the fact that the changes in the pre and post amendment reporting populations were not in expected directions suggests that greater efforts are required in order to inform the public about the changes brought about by the 1983 amendments. Specifically, any future public education campaigns should focus on explaining that the new legislation has both extended protection to spouses and persons assaulted by members of the same sex, and offers protection from a wider range of unwanted sexual activities.

The second area concerns victims who report sexual assaults. Based upon the small number of responses we received from victims, we suggest that there appears to be a need for expanding the range of legal educational services for victims, especially regarding the length of time that it will take for their case to be processed through the criminal justice system and the types of issues that may be raised at each step in the processing of the case.

The third area concerns criminal justice system practitioners. During the interviews with practitioners from the criminal justice system and related agencies, two themes kept recurring. The first concerned the need for more education and training.

Specifically, practitioners suggested that police investigators and crown counsel need further education and training to make them more aware of the emotional state and needs of sexual assault victims and thus improve their abilities to deal more effectively with them.

The second recurring theme concerned the judiciary. Specifically, practitioners suggested that members of the judiciary requires further education and training in order to increase their awareness and knowledge concerning the intent of the law (especially the changes to evidentiary requirements and procedural rules) and the impacts of the trial process on victims of sexual assault. We are severely limited in our ability to speak to these suggestions as we were denied access to members of the judiciary during the evaluation.

The fourth area concerns Sexual Assault Centre workers. The police force respondent as well as members of the crown staff suggested that Centre workers should be more aware of evidentiary and legal requirements in order not to jeopardize due process in cases where the victim decides to proceed through the criminal justice system. This concern is justified in that a significant proportion of victims first disclose the assaults to sexual assault counsellors.

We are not suggesting that sexual assault counsellors should make evidentiary and legal requirements their primary concern. Rather, we are suggesting that with some training regarding these requirements, counsellors (and victims) will be better able to make difficult decisions from a better informed position regarding the consequences of different courses of action (especially in cases where legal considerations conflict with counselling concerns). In cases where there is no conflict between counselling concerns and legal considerations, counsellors could be educated to understand such issues as how the way in which the victim's statement is revealed can influence the outcome of a trial.

7.4.2 Roles and Responsibilities

The second generic area in which concerns were raised related to the roles and responsibilities fulfilled by the criminal justice system and related agencies. In particular, there appears to be a requirement for a clearer division (and definition) of the roles and responsibilities of each agency. At present, there is a great deal of overlap in the types of activities performed by each agency, but there does not appear to be a clear division of roles and responsibilities. For example, it is not clear which agency is responsible for keeping the victim informed of the progress of a case through the criminal justice system. Similarly, at present more than one agency can be involved in preparing the victim for trial.

We suggest that a sexual assault protocol be established in Hamilton-Wentworth involving members of the police, the victim assistance program, the crown office, the Sexual Assault Centre and medical agencies. The first objective of the protocol would

be to clearly define the roles and responsibilities of each component agency as well as the directions and goals that each agency should be striving to attain.

7.4.3 Co-operation and Communication

The third generic concern follows from the suggestions regarding roles and responsibilities -- closer co-operation and communication between agencies. The first step in this regard could be accomplished by establishing a formal sexual assault protocol. This could foster greater understanding and co-operation between the various agencies.

Throughout the field work for this study we were struck by the apparent need for greater co-operation and communication between the police, crown counsel and the Sexual Assault Centre. Closer contact between the three agencies could help to ensure that the victim clearly understands criminal justice system processes and the progress of their case through the system. Closer co-operation could also foster greater understanding and sensitivity on the part of criminal justice practitioners regarding the psychology of trauma and crises.

Closer communication and co-operation need not mean co-optation. The Sexual Assault Centre could hold seminars for members of the police and crown to enhance understanding and sensitivity to the victim's felt experience and emotional needs. Participation in a formal protocol could ensure that the criminal justice system takes account of the victim's needs and avoids, to the extent possible, causing unnecessary trauma to the victim.

7.4.4 Minimizing Victim Trauma

Key informants made a number of suggestions regarding possible actions that would lessen the trauma for victims. The first solution concerned the use of specialized sexual assault teams in hospitals completing examinations of sexual assault victims. It was also suggested that these teams should include female physicians.

Respondents from all agencies agreed that more support is needed for victims of sexual assault. The problem is that there are not enough resources available to expand current support systems for victims of sexual assault. Until such time as current services can be expanded and improved, the "secondary victimization" of sexual assault victims as a result of their participation in the criminal justice process will probably continue to be a problem.

A recurring complaint by victims of sexual assault who responded to the survey of victims was that they were dissatisfied with the efforts taken to ensure that they knew what was going on with their cases. Key informants from the police and the crown

office agreed that owing to a lack of resources there is a problem trying to prepare victims for court and in keeping them informed as to the progress of their cases. One crown counsel remarked that victim preparation is usually conducted on the prosecutor's "own time" (i.e., unpaid overtime).

We recommend that the provincial and federal governments recognize the need for, and give urgent priority to, funding an information/resource program for victims of sexual assault. In order to test the effectiveness of such a program, the governments could consider reproducing some victim perceptual items over time to see if there have been improvements. Such data could be collected via victim support programs.

Beyond these concerns, two other interrelated issues were raised by a number of respondents. The first issue concerned the very high rate of "burnout" among front-line workers in the area of sexual assault. This includes crisis counsellors, crown attorneys and police investigators. Although no suggestions were provided as to how to alleviate this problem, it was recommended that planners be aware of this problem in thinking about and developing alternative models of service delivery.

The second issue raised by respondents from the police and the crown office was a fear that in the drive to create specialized sexual assault teams, there would be a tendency to fill these positions with women, creating, in effect, another female "job ghetto". The crown respondent who articulated this issue seemed to be suggesting that there is a prevailing bias that defines sexual assault as a primarily female issue that justifies the assignment of females to sexual assault cases, whether or not they want to specialize in the area.

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APPENDIX A

RESEARCH REPORTS

FROM THE

SEXUAL ASSAULT EVALUATION PROGRAM

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